Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 592

WILLIAM H. OSBORN, CHANNING F. MacNEIL, LEWIS C. ADAIR, ET AL., APPELLANTS,

vs.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER AND LESTER HOOKER, ETC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

FILED DECEMBER 15, 1939.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 16, 1940.

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[fol. 1] [Caption omitted]

[fol. 2] **IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA**

No. 8

WILLIAM H. OSBORN, CHANNING F. MACNEIL, LEWIS C. ADAIR, Accident and Casualty Company of Winterthur, Switzerland, American Automobile Insurance Company, Bankers Indemnity Insurance Company, Car and General Insurance Corporation, Limited, Central Surety and Insurance Corporation, Continental Casualty Company, Eagle Indemnity Company, Fireman's Fund Indemnity Company, General Accident Fire and Life Assurance Corporation, Limited, Glens Falls Indemnity Company, Hartford Accident and Indemnity Company, Indemnity Insurance Company of North America, London & Lancashire Indemnity Company of America, London Guarantee and Accident Company, Limited, Maryland Casualty Company, Massachusetts Bonding and Insurance Company, National Casualty Company, New Amsterdam Casualty Company, New York Casualty Company, Phoenix Indemnity Company, Royal Indemnity Company, Seaboard Surety Company, Standard Surety & Casualty Company of New York, Sun Indemnity Company of New York, The Aetna Casualty and Surety Company, The Century Indemnity Company, The Fidelity and Casualty Company of New York, The Hartford Steam Boiler Inspection and Insurance Company, The Standard Accident Insurance Company, The Travelers Indemnity Company, The Travelers Insurance Company, United States Casualty Company, United States Guarantee Company, Zurich General Accident and Liability Insurance Company, Limited, Plaintiffs,

v.

THOS. W. OZLIN, WILLIAM MEADE FLETCHER and LESTER HOOKER, Individually and as the Persons Constituting the State Corporation Commission of the State of Virginia, and George A. Bowles, Individually and as Commissioner of Insurance of the State of Virginia, Defendants

Civil Action

COMPLAINT—Filed November 12, 1938

[fol. 3] (1)

The plaintiffs and defendants in this action are as stated in the caption. The natural persons who are plaintiffs are

sometimes hereinafter called agent plaintiffs, and the other plaintiffs are sometimes hereinafter called company plaintiffs.

Jurisdiction in this action is founded as follows:

As to each agent plaintiff, the action arises under the 14th Amendment of the Constitution of the United States, Section 1, and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000); and is to redress the deprivation under color of a certain statute of the State of Virginia of rights, privileges, and immunities secured by the 14th Amendment to the Constitution of the United States, Section 1.

As to each company plaintiff, the action arises under the 14th Amendment to the Constitution of the United States, Section 1. As to each of General Accident Fire and Life Assurance Corporation, Limited, Indemnity Insurance Company of North America, London Guarantee and Accident Company, Limited, Maryland Casualty Company, Phoenix Indemnity Company, The Aetna Casualty and Surety Company, The Fidelity and Casualty Company of New York, The Hartford Steam Boiler Inspection and Insurance Company, The Standard Accident Insurance Company, The Travelers Indemnity Company, The Travelers Insurance Company, and Zurich General Accident and Liability Insurance Company, Limited, the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars ($3,000). The matter in controversy may or may not so exceed said sum, as to each other company plaintiff.

(2)

(a) Each agent plaintiff was born or has been naturalized in the United States and is subject to the jurisdiction thereof and of the State of Virginia, and is a resident of said state. For nearly two years up to July 15, 1938, as to Osborn, and more than ten years as to each of MacNeil and Adair, the agent plaintiffs were registered and held certificates of [fol. 4] registration under Section 4235 of the Code of Virginia, as agents of one or more company plaintiffs. During said periods, and continuously up to the present time so far as permitted by law, the agent plaintiffs have been and are authorized by said company plaintiffs respectively to act as their agents and to solicit, write, countersign, issue, and make contracts of insurance or surety, or both, for

them, and have done so. During said periods and continuously up to the present time the agent plaintiffs have been and are the salaried managers of the Richmond Branch Offices of said company plaintiffs, Osborn of The Aetna Casualty and Surety Company, MacNeil of The Travelers Indemnity Company, and The Travelers Insurance Company, and Adair of The Fidelity and Casualty Company of New York. Under the laws of the State of Virginia the agent plaintiffs, if they should have continued after July 15, 1938, so to act, without being registered and having secured certificates of registration under said Section 4235 as it had then been amended and re-enacted, would have been liable to the imposition of heavy fines and other penalties. If permitted by the defendants the name of each agent plaintiff would have been filed by his company or companies on or before July 1, 1938 with the State Corporation Commission of the State of Virginia, only as a resident agent, and he would have procured a certificate of registration only as a resident agent. But, solely for the reason that the agent plaintiffs are compensated by salary instead of commissions, said companies were not permitted so to file the names of the agent plaintiffs, and the agent plaintiffs were not permitted to procure such certificates of registration, and accordingly under the duress of the fear of said fines and penalties the names of the agent plaintiffs were filed as company representatives, and each agent plaintiff procured a certificate of registration as such, effective July 15, 1938, which he now holds.

(b) Each company plaintiff is a foreign or alien corporation and is a stock casualty insurance company or surety company, or both, and more than three years ago was admitted to the State of Virginia, and has since been and now is licensed to conduct therein the casualty insurance or surety business, or both, except that Accident and Casualty Company of Winterthur, Switzerland, and Seaboard Surety [fol. 5] Company, were admitted and became so licensed only on May 18, 1938, and on January 21, 1937, respectively.

(c) The defendants Ozlin, Fletcher, and Hooker are and for some years have been the only members of the State Corporation Commission of the State of Virginia hereinafter sometimes called the Commission, which is a constitutional department in existence since 1902 having the power and duty to administer the state insurance laws. The de-

fendant Bowles is and for some years has been the Commissioner of Insurance of the State of Virginia, was appointed by the Commission, serves at its pleasure, and is the head of a bureau or division thereof through which it administers said laws. All of the defendants are residents of and have their only offices in the City of Richmond, Virginia.

(3)

The State of Virginia licenses domestic and duly admitted foreign and alien stock casualty insurance and surety companies by annual licenses expiring April 30th.

(4)

By Section 1 of an Act approved February 6, 1896 (Acts of 1895-6, p. 258), foreign fire insurance companies admitted to Virginia were forbidden to "make contracts of insurance on property herein save through *regularly constituted* agents", and it was provided that its violation "is hereby declared to be a violation of the laws of this state providing for the payment of taxes by foreign insurance companies permitted to do business in Virginia". (At February 6, 1896 an insurance company doing business in Virginia was required by law annually to pay to the Treasurer a tax of 1% "upon the gross amount of all premiums collected or received, or obligations taken therefor, derived from its business in this state", immediately after making return thereof under oath to the Auditor of Public Accounts.) By Section 5 of said Act it was provided that renewals of their licenses should only issue after the filing of an affidavit "that no policy or policies of insurance covering property in the State of Virginia has been issued during the twelve months [fol. 6] preceding, except by resident agents of such company in Virginia, duly commissioned". No requirement has ever been made by the laws of the State of Virginia that such agents record the contracts so issued by them, or report such issuing, or the amounts of premiums upon the policies so issued, to any public authority.

By an Act approved April 2, 1902 (Acts of 1901-2, p. 738), accident, health, employers' liability, steam boiler, plate glass, surety and burglary insurance companies were included in the above Act, along with fire insurance companies, as companies forbidden to make "contracts of insurance on property herein" save through regularly constituted agents,

and it was further specified that such agents must be "residing in Virginia".

The Virginia insurance laws were codified by an Act approved March 9, 1906 (Acts of 1906, p. 122) creating the insurance bureau, Section 1 being included as Section 34, and Section 5 as Section 38, of Chapter II thereof; but the companies affected were then provided to include also "other insurance companies", and the contracts to include contracts "on *persons or* property herein". In 1919, Section 1 became Section 4222 of the Code of Virginia, and Section 5 became Section 4226 thereof.

By an Act effective June 19, 1936 (Acts of 1936, p. 169) Section 4222 was amended and re-enacted to define the contracts to which it applied as "contracts of insurance *or surety* on persons or property herein", and to provide that no such contract might be "written, issued or delivered" unless countersigned by "a regularly constituted and registered agent of such company whose residence and principal place of business is in this State". This Act also provided that a salaried employee of a stock company might write, issue, or countersign such a contract only if a registered resident agent.

By an Act effective June 21, 1938 (Acts of 1938, p. 343), Section 4222 was again amended and reenacted so as to permit countersignature by a registered resident "agency", if a registered resident "agent" attest the countersignature, and to forbid countersignature (except of life, title and ocean marine insurance contracts) by any state agent, special agent, company representative, manager or other salaried representative of a stock company.

[fol. 7] Neither the 1936 nor 1938 Act above referred to contained the provision that a violation should be a violation of the tax laws, though said premium tax laws are now and have continuously been in force since 1896 and before.

The defendants now construe and for a long period of years they and their predecessors have construed the laws now incorporated in the Code of Virginia as Sections 4222 and 4226 to apply to all contracts described therein (now, as "contracts of insurance or surety on persons or property" in the State of Virginia) and hereinafter sometimes referred to simply as contracts or as contracts covering in Virginia, including those the proposals for which have been wholly solicited and procured and which contracts themselves have been wholly negotiated, written (except for

countersigning), issued, delivered, the premiums on which have been collected, and every step in the making of which by each party thereto has been taken, outside of the State of Virginia. Such contracts as are so produced are sometimes hereinafter referred to as "produced outside of Virginia"; where spoken of herein as so produced it is meant that they were produced by non-resident brokers or agents duly licensed to act as brokers or agents by the states of their residence, and where they act as such; where "non-resident brokers or agents" are referred to herein it is meant that they are so licensed.

During said period the defendants and their predecessors have enforced or attempted to enforce said laws, and the defendants are now enforcing or attempting to enforce the same, in accordance with said construction.

(5)

For a number of years last past, and up to June 21, 1938, there was only a single classification as "agent" of persons registered under the laws of the State of Virginia as agents of stock casualty insurance and surety companies doing business in the State, the companies being required by a law which is Section 4235 of the present Code of Virginia to file annually on or before July 1st, with the Commission (or at such other times as they might be appointed) a list of agents authorized to solicit insurance for them in [fol. 8] the state, and said agents being required to secure certificates of registration from the Commission for each company proposed to be represented by them, authorizing them to represent it for a period ending on July 15th.

But by said Act effective June 21, 1938 (Acts of 1938, p. 343) Section 4235 was amended and reenacted to require the companies to file lists of the "agents, resident agents, agencies and company representatives", and provision was made for separate forms of certificates of registration for agents, agencies and company representatives. By this Act definitions were given to the words and terms "agent", "agency", "resident agent", "resident agency", and "company representative", by a new Code Section 4221-a created to that end. As construed by the defendants, the said Act requires the registration as a company representative and not otherwise of any salaried employee of a company, and the defendants are now enforcing said Act as so construed.

(6)

By another act effective June 19, 1936 (Acts of 1936, p. 270) and provided to be Section 4226-a of the Code of Virginia, a registered resident agent was forbidden to write, countersign, issue or deliver any policy of insurance upon persons or property in Virginia unless he should collect the full premium therefor. This Act went on to provide that he should be entitled to and receive the usual and customary commissions allowed on such policies. And it specified that he should write policies at the request only of another registered agent or broker licensed by the State of Virginia authorized by law to broker the business; and provided that on exchange of business between a Virginia resident agent and a non-resident agent or broker licensed as broker by the State of Virginia, the Virginia agent might pay commissions to the non-resident only in the same degree and proportion as are allowed Virginia agents, either by custom or the requirement of the statute law of the state in which the person licensed as broker resides. This Act forbade agents to countersign a blank contract, or to pay or allow any portion of any commission to an agent not regularly commis- [fol. 9] sioned and registered, or to any resident or non-resident broker not licensed by the State of Virginia; and it provided for violation to be punished by a fine of $10 to $500, and the suspension or revocation of certificate of registration. Section 168 of the Tax Code as then in effect defined a "broker", provided for the licensing, and contained regulations of brokers.

But by said 1938 Act which became effective June 21, 1938, Section 168 of the Tax Code was repealed and Section 4226-a was materially amended and reenacted. Section 4226-a was further changed to apply throughout to contracts of surety as well as of insurance; also to further limit the agents and agencies at whose request a registered agent or agency might write a contract by specifying that such agent or agency must be either (1) another resident agent or agency properly licensed to transact the same class of business, or (2) a non-resident insurance broker licensed by the State of Virginia, authorized by law to broker such a contract; and to provide that on exchange of business between a resident agent or agency in Virginia and a non-resident broker in another state licensed by the State of Virginia, the Virginia

agent might allow or pay to the non-resident a commission not exceeding 50% of the commission of the Virginia agent.

This 1938 Act also included in Section 4226-a a definition of a non-resident insurance broker as any non-resident person, firm or corporation soliciting for compensation, directly or indirectly to be derived therefrom, any "contracts of insurance or surety on persons or property located in this State", whether on behalf of the person desiring to effect the contracts or on account of an insurance company. It imposed on such broker for the privilege of transacting such business an annual license tax of $100 (subject to reciprocal decrease or retaliatory increase); and required that before the Commission should license such broker, he should make affidavit that he will not directly or indirectly place any such contracts except through duly licensed resident agents or agencies.

Section 4226-a does not apply to mutual insurance companies, or to title, life or ocean marine insurance contracts.

As construed by the defendants the words "usual and [fol. 10] customary commissions allowed" on contracts or policies, appearing in Section 4226-a, refer to the entire amount of the usual and customary commissions payable to brokers or agents out of the premiums on such contracts or policies, for the production of the same; and the words "on exchange of business", as appearing therein, include a reference to a transaction where a non-resident broker or agent sends a contract produced by him in his own state, or causes it to be sent, to a resident agent or agency in Virginia for the latter to countersign it, and the latter does so and sends back the contract, or causes it to be so sent; and said section applies throughout to all of the contracts to which it is above alleged in paragraph (4) that the defendants construe Section 4222 to apply; and said section requires a non-resident broker or agent to have a Virginia broker's license in order lawfully to produce, and be allowed commissions as a producer of, a contract covering in Virginia, even though none of his solicitation or other activity takes place in Virginia; and the defendants are enforcing, or attempting to enforce, Section 4226-a, as amended in 1938, as so construed.

(7)

(a) Each agent plaintiff up to June 21, 1938, or a later date, has countersigned for his respective company or com-

panies large numbers of contracts covering in Virginia some of which were produced outside of Virginia and some in Virginia. No special compensation has been charged or made for said countersigning services but the same have been rendered in the performance of the duties of the agent plaintiffs for which they have been compensated by their salaries. Due to the frequency of said countersignatures the aggregate value of the services of each agent plaintiff has been very great, though the value of furnishing a single countersignature was trivial.

(b) Numerous ones of the company plaintiffs, including those represented by the agent plaintiffs, have large, valuable, and expensive field forces and plants in Virginia, which cannot be moved therefrom without destruction thereof, and have had such for many years, and make numerous contracts covering in Virginia but produced outside of Virginia.

[fol. 11] In the year 1937, and in the first half of the year 1938, the company plaintiffs named below made contracts covering in Virginia but produced outside of Virginia, on some of which the aggregate premiums for the Virginia coverage, the approximate amounts of commissions paid to the non-resident brokers or agents who produced the said contracts, and the amounts paid for the Virginia countersignatures of said contracts were as shown in the following table, viz: [See p. 10]

Company Plaintiffs		Premiums for Va. Coverage	Payments to Non-Residents	Payments for Va. Countersignatures
General Accident Fire and Life Assurance Corporation, Ltd.	1937	$20,938.74	$4,295.88	$134.00
	½-1938	$15,056.43	$3,140.49	$137.50
Indemnity Insurance Company of North America	1937	$24,739.24	$4,579.22	Not available
	½-1938	$13,458.72	$2,513.62	Not available
London Guarantee and Accident Company, Ltd.	1937	$37,153.39	$6,490.56	Not available
	½-1938	$9,188.22	$1,437.35	Not available
Maryland Casualty Company	1937	$30,309.69	$4,636.86	$402.34
	½-1938	Not available	Not available	Not available
Phoenix Indemnity Company	1937	$19,495.04	$3,317.22	Not available
	½-1938	$11,493.01	$1,977.20	Not available
The Aetna Casualty and Surety Company	1937	$20,428.94	$2,743.25	None
	½-1938	$39,566.39	$6,394.39	None, except for cases not material after 6-20-38
The Fidelity and Casualty Company of New York	7-1-37 to 7-1-38	$54,973.98	$7,995.84	No payments made except for cases not material after 6-20-38
The Hartford Steam Roller Inspection and Insurance Company	1937	$47,656.00	$10,722.00	None
	½-1938	$3,491.00	$785.00	None, except for cases not material after 6-20-38
The Standard Accident Insurance Company	1937	$17,257.49	$3,678.84	None
	½-1938	$11,171.46	$2,480.84	Not available
[fol. 12]				
The Travelers Indemnity Company	1937	$14,377.02	$2,942.14	None for the bulk of the countersignatures and only nominal amounts for the others
	½-1938	$6,635.96	$1,342.23	
The Travelers Insurance Company	1937	$64,212.94	$8,775.64	
	½-1938	$36,359.21	$5,289.57	
Zurich General Accident and Liability Insurance Company, Limited	1937	$59,425.15	$10,683.51	$592.95
	½-1938	$37,306.98	$6,274.84	Not available

As to each of the above company plaintiffs in similar periods subsequent to those for which figures are shown above, the figures will average substantially the same except to the extent that they shall be affected by said 1938 Act or by other factors not now to be foreseen. If said 1938 Act had been in effect throughout 1937 and the first half of 1938, and had been complied with by the persons furnishing the Virginia countersignatures, there would have been payable by each of said company plaintiffs for Virginia countersignatures on the contracts shown in the table, one-half of what it paid to said non-residents.

Some of the contracts shown in the table were produced by brokers or agents not licensed as brokers by the State of Virginia. The contracts shown in the table could have been placed with equal advantage to the producing brokers or agents so far as the amounts of their commissions were concerned, in companies not subject to Section 4226-a of the Code of Virginia.

Among said contracts shown in the table were numerous individual contracts on each of which the amount of commission paid to the non-resident producer was thousands or hundreds of dollars.

Those of said contracts shown in the table upon which much the larger part of the premiums shown therein was paid were produced by non-resident brokers, not agents. In most instances the producing broker had power to determine and control the company with which the contract [fol. 13] would be made, and would not have permitted the contract to be made with the company with which it was made unless the broker had received substantially as large an amount of commission as he did receive.

(8)

This action is brought to secure a declaration of the rights of the plaintiffs, and to enjoin and restrain the enforcement of each of the several provisions of said 1938 Act (Acts of 1938, p. 343) which either singly or in conjunction with other provisions prohibits:

(a) The countersignature of contracts covering in Virginia by the agent plaintiffs; and prevents the procurement by the company plaintiffs by which duly registered company representatives are employed, of countersignatures of said contracts by such representatives;

(b) The making by company plaintiffs outside of Virginia of such of said contracts as are produced outside of Virginia, through brokers or agents who are not regularly constituted and registered agents of such companies residing in and having their principal places of business in Virginia, notwithstanding that said contracts shall be countersigned in Virginia as required by its laws;

(c) The countersignature by the agent plaintiffs, if and when otherwise permitted by law so to do, of such of said contracts as are produced outside of Virginia, without collecting at the times the contracts are written, issued, or delivered, or within reasonable times thereafter, the full premiums on said contracts, or seeing to such collection thereof; and prevents the procurement by the company plaintiffs of countersignatures of said contracts without the countersigning agents collecting or seeing to the collection of said premiums at or within the said times;

(d) The countersignature by the agent plaintiffs (if and when so permitted) of such of said contracts as are produced outside of Virginia without receiving the usual and customary commissions allowed thereon for the production thereof; and prevents the company plaintiffs from procuring the countersignatures for said contracts without expense or by paying for the countersignatures of said contracts, amounts of compensation commensurate with the value of the services rendered or as mutually agreed which [fol. 14] are less than one-half of the amounts of such usual and customary commissions;

(e) The countersignature by the agent plaintiffs (if and when so permitted) of such of said contracts as are produced outside of Virginia, at the request of brokers or agents not registered under Section 4235 of the Code of Virginia, or otherwise licensed by the State of Virginia; and prevents the company plaintiffs from procuring countersignatures of said contracts at the request of said non-resident brokers or agents;

(f) The allowance or payment by the agent plaintiffs who shall countersign such of said contracts as are produced outside of Virginia to those non-resident brokers or agents not licensed by the State of Virginia who shall have produced said contracts, of any portion of any commission which said agent plaintiffs receive, or, are entitled to receive; and prevents the company plaintiffs from procuring

said allowances or payments by Virginia countersigners of said contracts to said non-resident brokers and agents;

(g) The allowance or payment by the agent plaintiffs who shall countersign such of said contracts as are produced outside of Virginia to non-resident brokers or agents who are licensed by the State of Virginia as non-resident brokers and shall have produced said contracts, of more than 50% of the usual and customary commissions thereon; and prevents the company plaintiffs from procuring allowances or payments in excess of the said portion of said commissions by Virginia countersigners of said contracts to said non-resident brokers or agents.

(9)

The said 1938 Act and each provision thereof mentioned in paragraph (8) hereof violates the rights of the plaintiffs as follows:

It [except the provision having the effect as stated in sub-paragraph (b) of paragraph (8)] violates the rights of the agent plaintiffs because it abridges their privileges or immunities as citizens of the United States and deprives them of their liberty and property without due process of law contrary to the provisions of Section 1 of the 14th Amendment of the Constitution of the United States, and the provision having the effects as stated in subparagraph (a) of paragraph (8) also denies them the equal protection [fol. 15] of the laws contrary to said Section of said Amendment.

It violates the rights of the company plaintiffs because it deprives them of their property without due process of law contrary to the provisions of Section 1 of the said 14th Amendment.

The plaintiffs do not claim that any provision of the said 1938 Act violates the rights of the company plaintiffs because of denying them the equal protection of the laws, nor that any provision thereof violates the rights of the agent plaintiffs because of such denial, except for the reason as shown in paragraph (11) hereinafter.

(10)

Compliance with those provisions of said 1938 Act which have the effects as stated in sub-paragraphs (a) to (g) of paragraph (8), and with each of them, subjects or will sub-

ject the agent plaintiffs, and the company plaintiffs, as shown in each sub-paragraph hereof, to immediate, irreparable damage and injury, which is continuing or will continue day by day. Each said compliance interferes or will interfere with the transaction of that part of the business of each plaintiff which is or will be affected thereby, and injures or will injure and tends or will tend to destroy the same. Each said compliance, having the effects as stated in each of said sub-paragraphs, causes or will cause said damage and injury to the plaintiffs, as follows:

(a) To the agent plaintiffs, by preventing them from countersigning contracts, which work they are employed and paid to do, and rendering their employment less advantageous to their employers than it has heretofore been, and lessening the value of the services of said plaintiffs; to the company plaintiffs by which registered company representatives are employed by preventing them from securing without any special payment being made therefor frequently needed Virginia countersignatures on contracts produced outside of Virginia, and compelling them to make a special compensation therefor to persons who are not company representatives; and to said company plaintiffs by preventing their securing countersignatures by said company representatives of contracts produced in Virginia in cases [fol. 16] where the special circumstances do not admit of countersignatures being furnished by the agents who produced the contracts;

(b) To the company plaintiffs, by preventing them from transacting that part of their business which consists of the making in other states than Virginia of such of said contracts as are produced outside of Virginia through non-resident brokers or agents, but are countersigned in Virginia, and interferes with the making of said contracts by increasing the difficulty, time, and expense of making said contracts;

(c) To the agent plaintiffs by preventing the countersignature by them of such of said contracts as are produced outside of Virginia, without collecting or seeing to the collection of the full premiums thereon, thus rendering the employment of the agent-plaintiffs less advantageous to their employers and lessening the value of their services; to the company plaintiffs by preventing the procurement of countersignatures of said contracts without said collec-

tion by the countersigners, or their seeing to said collection, increasing the difficulty, time and expense of procuring the same, and requiring them to incur the loss of time and expense of the handling and accounting for said premiums with the countersigners;

(d) To the agent plaintiffs by preventing the countersignature by them of such of said contracts as are produced outside of Virginia without receiving the usual and customary commissions for the production thereof, with the effects indicated in (c) just above; to the company plaintiffs by preventing the procurement of countersignatures of said contracts without said receipt by the countersigners, with the effects as indicated in (c) just above; to the agent plaintiffs by requiring them to receive said commissions though they desire to and ought to receive no compensation for said countersignature services beyond their salaries; to the company plaintiffs by requiring them to pay again for countersignature services by registered company representatives payment for which has already been made by the payment of their salaries, and to make greatly excessive and unreasonable compensation therefor to registered resident agents;

(e), (f), (g) To the agent plaintiffs by respectively preventing their countersigning such of said contracts as are produced outside of Virginia, at the request of non-resident brokers or agents not licensed by the State of Virginia, preventing the allowing or paying of any part of the usual and [fol. 17] customary commissions for the production thereof to those of said persons who shall have produced said contracts, and unreasonably limiting the portions thereof which may be allowed or paid to those non-residents who are licensed as brokers by the State of Virginia, who shall have produced said contracts, thus preventing the agent plaintiffs from doing some of the work they are employed and paid to do, rendering their employment less advantageous to their employers and lessening the value of their services; to the company plaintiffs by respectively preventing their procurement of countersignatures of said contracts at the request of non-resident brokers or agents not licensed by the State of Virginia, preventing their procurement of allowances or payments of any part of said usual and ordinary commissions for the production thereof to such of said persons as shall have produced said contracts, and unreasonably limiting the portions of said commissions which

they may procure to be paid to those non-residents who are licensed as brokers by the State of Virginia and who shall have produced said contracts. Each destroys or will destroy that part of the businesses of the company plaintiffs which consists of the making of such of said contracts as are produced by non-residents whether or not they are licensed as brokers by the State of Virginia.

(11)

Each said regulation of the actions of any of the plaintiffs and each said limitation imposed upon the conduct of any of them in the exercise of a right to work and labor, or a right to conduct a business, by means of the said 1938 Act mentioned above, and by means of one or more provisions thereof, having an effect as stated in paragraph (8) above, is undue, unreasonable, arbitrary and void. Each of said provisions is designed exclusively to promote the interests of the general body of the Virginia stock fire, casualty, and surety agents who are not registered company representatives of companies, with the view to unjustly enrich them at the expense of those who are so registered (by lessening the value of their services) at the expense of the companies (by increasing their operating costs and causing them losses of business) at the expense of the insuring public (by increasing the cost of insurance) and at the expense of the [fol. 18] Commonwealth of Virginia, (by causing loss of the taxes on premiums on contracts covering in Virginia but produced outside of Virginia which will be placed in non-admitted companies). The unreasonable prohibition against the agent plaintiffs countersigning contracts, although they are in every respect qualified and entitled so to do is intended only to compel the company plaintiffs to secure countersignatures of their contracts covering in Virginia though produced outside of Virginia, from the Virginia registered resident agents. The unreasonable regulations of the furnishing of such countersignatures on such contracts are intended only to secure to them the payment of grossly excessive amounts of compensation therefor. The regulation and limitation having the effects as stated in sub-paragraph (a) of paragraph (8) is void whether undue, unreasonable, and arbitrary, or otherwise, because not bear-

ing equally upon the agent plaintiffs and registered resident agents.

(12)

Unless the defendants shall be enjoined and restrained as stated in paragraph (8) hereof, plaintiffs must comply in the future with the terms and provisions of said 1938 Act in fear of the severe penalties which may be imposed upon them by the laws of the State of Virginia for non-compliance therewith.

(13)

There is an actual controversy between each plaintiff and the defendants. None of the plaintiffs has a plain, adequate, speedy, and efficient remedy at law or in equity in the courts of the State of Virginia. None of the plaintiffs has a full, complete, and adequate remedy at law.

Wherefore the plaintiffs pray that their rights in the premises be declared.

And the plaintiffs further pray that a permanent injunction be awarded against the enforcement of those provisions of said 1938 Act hereinbefore alleged to violate the constitutional rights of the plaintiffs, that a temporary injunction be awarded against said enforcement pending final judg-
[fol. 19] ment herein, and that pending hearing and determination of a motion for a temporary injunction, a temporary restraining order be awarded against said enforcement.

And the plaintiffs further pray that it be adjudged that each said provision of said 1938 Act is contrary to and in violation of the Constitution of the United States, and that each said provision and said Act is void and of no effect.

And the plaintiffs further pray that plaintiffs have such further relief as to equity may seem meet and the nature of their cases may require.

(Signed) A. D. Christian, Attorney for the Plaintiffs, 506 Mutual Building, Richmond, Va.

Christian, Barton and Parker, 506 Mutual Building, Richmond, Va., Of Counsel.

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING COURT PURSUANT TO SECTION 266 OF THE JUDICIAL CODE FOR HEARING ON APPLICATION FOR INTERLOCUTORY INJUNCTION, FIXING A DATE FOR HEARING, AND GRANTING A TEMPORARY RESTRAINING ORDER

Entered and Filed December 5, 1938

Upon the complaint and the individual affidavit of A. C. Epps, the joint affidavit of William H. Osborn, Channing F. MacNeil, and Lewis C. Adair, and the individual affidavit of Robert H. Nicholls, and after notice duly served on the attorney for the defendants, and argument of counsel for the plaintiffs and defendants, and upon the proceedings had, it appearing to the court that the said complaint seeks an injunction, interlocutory until hearing, and permanent thereafter, restraining the defendants from in any manner enforcing, or attempting to enforce against the plaintiffs, certain provisions of Chapter 218 of the Acts of 1938 of the General Assembly of the State of Virginia (Acts of 1938, p. 343) as hereinafter specified, upon the ground of the unconstitutionality of said Act, it is, pursuant to Section 266 of the Judicial Code, Ordered:

(1) The Honorable Robert N. Pollard, Judge of the above court, hereby calls to his assistance to hear and determine the application of plaintiffs for the granting of an interlocutory injunction, the Honorable Morris A. Soper, Judge of the United States Circuit Court of Appeals for the Fourth Circuit, and the Honorable Luther B. Way, Judge of the [fol. 21] United States District Court for the Eastern District of Virginia;

(2) That said defendants appear and show cause, if any they have, on the 1st day of February, 1939, at 10 o'clock A. M., at the United States Court House, Post Office Building, Richmond, Virginia, why an interlocutory injunction should not issue as prayed for in said complaint.

And it Appearing to the court that immediate and irreparable damage is being or will be caused to the plaintiffs by compliance with said Act, in that

(A) It prevents the agent plaintiffs, William H. Osborn, Channing F. MacNeil, and Lewis C. Adair, from countersigning contracts of insurance or surety on persons or property in the State of Virginia which work they are employed and paid to do, and renders their employment less advantageous to their employers than it has heretofore been, and thereby lessens the value of the services of the said plaintiffs; and prevents a number of the company plaintiffs, including The Aetna Casualty & Surety Company, The Travelers Indemnity Company, The Travelers Insurance Company, The Fidelity & Casualty Company of New York, from securing frequently needed Virginia countersignatures on contracts produced outside Virginia from their salaried company representatives, and compels them to make compensation therefor to persons who are not company representatives;

(B) It prevents the company plaintiffs from transacting that part of their business which consists of the making in other states than Virginia of such of said contracts as are produced outside of Virginia through non-resident brokers or agents, but are countersigned in Virginia, except through Virginia registered resident agents, and thereby interferes with their business of the making of said contracts by increasing of the difficulty, time, and expense of the making of said contracts;

(C) It prevents the agent plaintiffs from countersigning such of said contracts as are produced outside of Virginia, without collecting the full premiums thereon, or seeing to the collection of the same, and thereby renders their employment less advantageous to their employers and lessens the value of their services; and prevents the company plaintiffs from procuring the countersignature of said contracts without said collection or the seeing to said collection by the countersigners, and thereby increases the difficulty, time, and expense of procuring the same, and requires the company plaintiffs to incur the loss of time and expense of the handling and accounting for said premiums with the countersigners;

(D) It prevents the agent plaintiffs from countersigning such of said contracts as are produced outside of Virginia without receiving the usual and customary commissions for the production thereof, with the effects indicated in the

preceding paragraph (C); and prevents the company plaintiffs from procuring countersignatures of said contracts without said receipt by the countersigners, with the effects [fol. 22] as there indicated; and requires the agent plaintiffs to receive said commissions, though they desire to, and ought to receive no compensation for their countersignature services beyond their salaries, and requires the company plaintiffs which employ salaried representatives to pay again for countersignature services by registered company representatives, when they have already made payment therefor by the payment of their salaries to said representatives, and requires all company plaintiffs to make greatly excessive and unreasonable compensation for Virginia countersignatures of said contracts to registered resident agents;

(E) It prevents the agent plaintiffs from countersigning such of said contracts as are produced outside of Virginia, at the request of non-resident brokers or agents not licensed by the State of Virginia, and from allowing or paying any part of the usual and customary commissions for the production thereof to those of said persons who shall have produced said contracts, and unreasonably limits the agent plaintiffs as to the portion of said commissions which may be allowed or paid to those non-residents who are licensed as brokers by the State of Virginia, who shall have produced said contracts, and thereby prevents said agent plaintiffs from doing some of the work they are employed and paid to do, and renders their employment less advantageous to their employees, and lessens the value of their services; and prevents the company plaintiffs from procuring countersignatures of said contracts at the request of non-resident brokers or agents not licensed by the State of Virginia, and from the procurement of allowances or payments of any part of said commissions for the production of said contracts to such of said persons as shall have produced said contracts, and unreasonably limits the company plaintiffs as to the portions of said commissions which they may procure to be paid to those non-residents who are licensed as brokers by the State of Virginia and who shall have produced said contracts;

And it appearing to the court that all of the said injuries are being or will be immediately and irreparably sustained

by compliance with said Act in that they are continuously causing or will continuously cause expense, loss, and damage to the plaintiffs for the recovery of which they do not and will not have an adequate remedy; and that the plaintiffs have made out a *prima facie* case that each provision of said Act having an effect on the plaintiffs as set out in any of paragraphs (A) to (E) above, violates the constitutional rights of the plaintiffs and is therefore void; and that unless the defendants shall be enjoined and restrained, the plaintiffs must comply in the future with the terms and provi-
[fol. 23] sions of said Act in fear of the penalties which may be imposed upon them by the laws of the State of Virginia for non-compliance therewith, it is further ordered:

That Thos. W. Ozlin, William Meade Fletcher, and Lester Hooker, individually and as the persons constituting the State Corporation Commission of the State of Virginia, and George W. Bowles, individually and as Commissioner of Insurance of the State of Virginia, and their agents, servants, employees, and attorneys, be and they hereby are enjoined from in any manner enforcing, or attempting to enforce, each provision of said Act, having an effect on any of the plaintiffs, as set out in any of paragraphs (A) to (E) above. This injunction shall in effect until said hearing on said application for an interlocutory injunction and the entry of an order or decree thereon.

Provided that this order shall not become effective until the plaintiffs or someone in their behalf shall have filed with the Clerk of this Court a bond, with surety to be approved by the Clerk of this Court, conditioned upon the payment of such costs and damages as may be incurred or suffered by the defendants, such bond to be in the penalty of Five Hundred Dollars ($500).

And it is further ordered that service of a copy of this order on the defendants and on the Governor and Attorney General of the State of Virginia, on or before the 15th day of January, 1939, accompanied by a copy of said complaint and affidavits, shall constitute good and sufficient service hereof and notice of the hearing on the said application for an interlocutory injunction.

And it is further ordered that the time for the filing of the answer of the defendants is further extended to December 27, 1938.

Dated this 5th day of December, 1938, at 12 o'clock Noon.

Robt. N. Pollard, United States District Judge.

[fol. 24] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed December 27, 1938

Thomas W. Ozlin, William Meade Fletcher and Lester Hooker, individually and as composing the State Corporation Commission of Virginia, and George A. Bowles, individually and as Commissioner of Insurance of Virginia, the defendants in the above entitled action, for answer to the bill of complaint therein, or to so much and such parts thereof as they are advised it is necessary or proper to make answer unto, answering, admit, deny, and allege as follows:

[fol. 25] (1)

With reference to the allegations set forth in paragraph (1) of the complaint, the defendants deny that the natural persons named as plaintiffs are insurance agents within the meaning of this term as generally used in the casualty insurance and surety business, and allege that said persons are in truth, and in fact, branch managers of the companies represented by them, and are "Company Representatives" within the classification of agents and representtives of certain insurance companies and of casualty companies and surety companies prescribed by the Virginia statutes referred to in the complaint. In order, therefore, to avoid confusion resulting from the indiscriminate use of the word "agent", the said natural persons who are named as plaintiffs in the complaint will hereafter in this answer be referred to as "Branch Managers". The defendants deny that either said branch manager plaintiffs or the company plaintiffs named in the complaint have been, are being, or will be, deprived of any rights, privileges, or immunities secured to them by the Fourteenth Amendment to the Constitution of the United States, by any statute of the State of Virginia referred to in the complaint, or by any act or threatened act of the defendants, or any of them, in construing or enforcing any such statute. The defendants admit that the matter in controversy exceeds three thousand dollars, as in said paragraph alleged.

(2)

The defendants admit all the facts alleged in paragraph two, except the allegation contained in the last sentence of

[fol. 26] subparagraph (a) to the effect that the sole reason the individual plaintiffs have not been able to secure certificates of registration as "Resident Agents" is because they receive a salary. Defendants aver that this allegation is wholly misleading. The Virginia statutes here challenged have divided and classified into two separate classes or groups the persons engaged in Virginia in the business of procuring, or of assisting or supervising others in procuring, the making of certain insurance, casualty and surety, contracts. This classification is based upon the essential duties, obligations and functions which have heretofore been performed by these two classes or groups, in the conduct of said business in Virginia, as well as generally throughout the United States.

Under these well established customs and practices of the business there is a marked difference in the general duties and functions, as well as in the obligations to the assured and to the companies, of salaried representatives which constitute one class, and of commissioned agents who constitute the other class. These customs have established the fact that the method of compensation applicable to a particular person engaged in this phase of the said business controls the duties, obligations and functions of such person in the business, and provides the most accurate basis of classification available.

The duties, obligations and functions of the "Branch Manager" plaintiffs are essentially different from those of "Resident Agents", and they are classified in separate classes or groups, as more fully appears in paragraph 17 of this answer. The defendants have construed the said statutes as forbidding a person from being licensed or regis-
[fol. 27] tered in both classes, though he, or his company, may elect in which class he shall be licensed or registered. The "Branch Manager" plaintiffs and the companies they represent have elected that they be registered as "Company Representatives", and they are therefore ineligible to register or act as "Resident Agents".

(3)

The defendants admit the allegations contained in paragraph three of the complaint.

(4)

The defendants admit the correctness of the allegations contained in the first six subparagraphs of paragraph four of the complaint, but they deny that sections 4222 and 4226 of the Code, as construed and enforced or intended to be enforced by them, in any way prevent the plaintiff companies, their agents in other states, or brokers, from soliciting, negotiating, collecting the premiums for, and delivering in other states the contracts referred to covering in Virginia, provided such contracts have first been submitted to a registered Virginia "Resident Agent" for examination as to their regularity and correctness, and compliance with Virginia laws, and have been countersigned by such a "Resident Agent"; and provided further that such a registered agent has been compensated for his present and future services in connection with such contracts by payment to him of the commissions customarily paid such agent for such services in cases where he himself negotiates a similar contract.

[fol. 28]

(5)

The defendants admit the allegations contained in paragraph five of the complaint, but aver that the basis of classification adopted by said statute is a fair, reasonable, and proper one.

(6)

The defendants admit the allegations contained in the subparagraph one of paragraph six of the bill of complaint, but aver that while it is true that section 168 of the Tax Code was repealed by said 1938 Act, it is also true that by the 1936 Acts aforesaid it was in effect amended and transferred from the Tax Code to the general Code as section 4226a. Defendants further allege that the only material amendment made in said section 4226a in 1938 was the change in the manner of the division of commissions on exchange of business between resident agents of Virginia and nonresident licensed brokers, the 1938 Act providing that the resident agent of Virginia may allow or pay to such nonresident broker a commission not exceeding fifty per cent of the resident agent's commission, whereas the law prior thereto provided that such division should be based on the same degree and proportion as is allowed Virginia agents,

either by custom or the requirement of the statute law of the state in which the licensed nonresident agent or broker resided.

They deny the allegations contained in the third subparagraph of paragraph six of the complaint in so far as same may be construed as alleging an attempt by the defendants to require nonresidents of other states to procure a Virginia nonresident broker's license in order to negotiate in another [fol. 29] state a contract with or for the plaintiff companies, or to be compensated therefor by said companies, and they further deny that the annual license tax imposed by said section 4226a is the sum of one hundred dollars, except in very rare cases where, under the reciprocal provisions of said section, the other state in which the broker resides imposes a tax of one hundred dollars on Virginia residents for a like license. They aver that the average nonresident broker's license tax is $19.54 and that the amount of tax in each case is fixed by the tax charged by the home state of the nonresident Virginia broker.

They deny the allegation contained in the fifth subparagraph of paragraph six of the bill of complaint, which alleges that the defendants construe the words "usual and customary commissions allowed", on contracts or policies appearing in section 4226a, as referring to the entire amount of the usual and customary commissions payable "to brokers or agents out of the premiums on such contracts or policies, for the production of the same", and aver that same does not include overriding commissions paid to general agents, or any commissions paid an unlicensed non-resident agent or broker.

They deny the allegation that they are construing the said section as requiring non-resident unlicensed brokers negotiating in other states contracts of Virginia coverage to have a Virginia nonresident broker's license in order for the plaintiff companies to pay such nonresident a commission for his services, or that they are enforcing or intend to enforce any such construction of said section.

They admit the remaining allegations of this subparagraph.

[fol. 30] (7)

The defendants admit that the "Branch Manager" plaintiffs have countersigned contracts for plaintiff companies without additional compensation as alleged in paragraph

7(a), but aver that in so doing they were not performing the same functions, or undertaking the same obligations, as a "Resident Agent" customarily performs and undertakes by signing same, because said "Branch Managers" owe no duty to the insured to examine the contract from the standpoint of the insured's interest, but only from the standpoint of that of the company; and because the branch managers will not thereafter be under the "Resident Agents" customary obligation to thereafter watch out for the interests, rights and protection of the assured during the life of the contract.

The defendants deny the allegation contained in paragraph 7(b) to the effect that any of the nonresident agents who placed with the plaintiff companies the contracts therein tabulated could have placed same in companies not subject to section 4226a of the Code of Virginia, and aver that in few, if any of the instances so recorded, the nonresident brokers could have placed said contracts in companies not subject to section 4226a. They deny that the persons insured would have consented to such placing of such contracts, or that they will consent to so placing similar contracts in the future.

The defendants have no knowledge of and neither admit nor deny the allegation that there were numerous single contracts for which the commissions paid to nonresident producers amounted to hundreds or thousands of dollars, but [fol. 31] aver that the allegation is wholly immaterial, even if true.

The defendants admit the remaining portion of paragraph seven.

(8)

The defendants deny that the plaintiffs, or any of them, in this proceeding are entitled to secure any declaration of rights involving a judicial construction of the Virginia statutes referred to in the complaint, as alleged in the first subparagraph of paragraph eight thereof.

(a) The defendants deny that the plaintiffs, or any of them, are entitled to an injunction, as alleged in subparagraph (a), which would permit the "Branch Manager" plaintiffs to provide the countersignature on any contracts covering Virginia risks which the said Virginia statute requires shall be provided by a registered "Resident Agent".

Defendants deny that they are construing, or will con-

strue or enforce said statutory provisions to prohibit such "Branch Manager" plaintiffs from also countersigning said contracts, provided same are likewise countersigned by a "Resident Agent", and the other provisions of the said statutes are complied with.

(b) The defendants deny that said statutes, as construed and heretofore enforced, or as the same will be hereafter enforced by them, prohibit the company plaintiffs from "making" in other states, through such agents or brokers as they desire, contracts covering in Virginia, when such contracts are countersigned by registered Virginia "Resident Agents", but aver that all such contracts, within the [fol. 32] meaning of said statutes and particularly of section 4222 of the Code, as construed by defendants, are "made through regularly constituted and registered 'Resident Agents' " when same have been countersigned by such a "Resident Agent".

They therefore deny the right of the plaintiffs to enjoin and restrain the defendants from doing an act or acts which none of these defendants are doing or threatening or intending to do.

The defendants deny that the plaintiffs, or any of them, are entitled to an injunction to restrain the defendants from interfering with the branch manager plaintiffs in performing the acts, or any of them, referred to and set out in subparagraphs (c), (d), (e), (f) and (g) of paragraph eight. All of these acts relate to functions which may be performed only by, or at the instance of or with the acquiescence of, a "Resident Agent" after he countersigns the contract; i. e., the collection of the premium; the receipt of compensatory commissions; the writing and issuing of Virginia coverage contracts by branch managers solely through persons not licensed to act as agents or brokers in Virginia; the division of commissions with such unlicensed persons and a division thereof with licensed non-resident brokers except in accordance with the statute. All of said acts are outside the proper scope and function of a "Branch Manager" both as established by custom and practice, and as prescribed by the Virginia statutes referred to in the complaint.

Defendants aver that the statutory classification hereinbefore referred to which, as construed by them, places these duties and functions solely on a "Resident Agent", and not [fol. 33] on a "Branch Manager" or other officer of a com-

pany, is based upon experience, custom and practice, and is a reasonable classification.

The defendants further aver that it is contrary to the public policy of Virginia to permit the said branch manager plaintiffs to receive commissions for procuring contracts, or to permit the splitting or division of commissions by an agent, entitled by law to receive same, with any person not licensed as a "Resident Agent" or a "Nonresident Broker" in Virginia, or to permit rebates in any form whatsoever.

The defendants deny that the said statutes referred to in paragraph eight of the complaint, as construed and enforced by them, or as intended to be construed and enforced by them in the future, prohibit or prevent the company plaintiffs (as alleged in subparagraph c) from procuring the countersignatures of "Resident Agents" on Virginia coverage contracts made in other states in any cases where, at the time any such contracts are made, there exists a bona fide intention on the part of said companies to collect the premiums therefor, and provided there is no intention to engage in the prohibited practice of "free insurance", or to give any rebates, and this is true regardless of whether the contract is negotiated outside Virginia by or through a nonresident unlicensed broker or any other person; accordingly, the allegations contained in subparagraph (e) that the company plaintiffs are being prevented by said statutes from procuring the countersignature of "Resident Agents" in cases where such a contract is negotiated by a nonresident, unlicensed broker is denied by the defendants.

[fol. 34] The defendants deny that the plaintiffs, or any of them, are entitled to enjoin them from doing any of the acts complained of in said paragraph eight, and deny that the compensation required to be paid to "Resident Agents" who countersign said contracts is incommensurate with the services rendered and to be rendered by them in connection therewith.

(9)

The defendants deny that, as alleged in paragraph nine of the complaint, either the company plaintiffs or the branch manager plaintiffs are deprived of their liberty or property without due process of law by the statutes therein referred to, as construed, enforced and intended to be enforced by the defendants, or that said branch manager plaintiffs are

thereby denied or deprived of the equal protection of the laws for the reasons set forth in paragraph eleven of the complaint, as alleged in said paragraph nine.

(10)

The defendants deny that the "Branch Manager" plaintiffs will be interfered with in the performance of their customary duties as such representatives of their companies, as set forth in subparagraphs a, b, c, d, e, f and g of paragraph ten of the complaint, and deny specifically the allegations with respect to each subparagraph as follows:

(a) The defendants deny that the said "Branch Manager" plaintiffs' services will be rendered any less valuable [fol. 35] to their companies by reason of the requirement that "Resident Agents" countersign and be associated with all contracts of Virginia coverage, for the reason that the actual service to be rendered by them will remain the same as heretofore except for the clerical act of countersigning the contracts. They aver that the effect of the statute associating "Resident Agents" with such contracts and requiring their countersignature is to cause a service to be rendered in Virginia by said "Resident Agents" to the assured which has not, and in the nature of things could not be properly and impartially rendered by such branch managers, both in the examination of the contract at the time of countersignature and thereafter in servicing same, because said branch managers represent the companies exclusively, whereas the "Resident Agents" represent both the companies and the insureds. In this dual capacity they are in a position to see, and should see, that such contracts are fairly and justly entered into, and fairly and justly performed by both the company and the assured. It still continues to be necessary for a "Branch Manager" to perform for his company substantially all the service he has rendered in the past.

(b) The defendants deny the damage alleged in subparagraph (b) of paragraph ten of the complaint, and aver that the company plaintiff cannot justly complain of being required to make contracts with nonresidents through "Resident Agents", who are in a position to and should render such nonresident assureds a local service which, for the reasons set forth in subparagraph (a) above, the

branch managers and other "Company Representatives", in the nature of things, cannot render.

[fol. 36] (c) The defendants deny that the statutory requirement for the collection of premiums, as construed and enforced by defendants as set out in paragraph eight of this answer, will result in any damage of any kind to any of the plaintiffs as claimed in subparagraph (c) of paragraph ten of the complaint.

(d) The defendants deny that any of the plaintiffs have any just or legal ground to complain of any of the matters of alleged damage referred to in subparagraph (d) of paragraph ten of the complaint, and deny that, as a matter of law, they, or any of them, are damaged by reason of any of said matters.

(e), (f) and (g). For the reasons set forth in subparagraph (a) of this paragraph, the defendants deny that the "Branch Manager" plaintiffs are damaged by the matters alleged in subparagraph (e), (f) and (g) of paragraph ten of the complaint, and for the reasons set forth in subparagraph (b) hereof the company plaintiffs are not thereby damaged under the terms of the said statutes as construed and enforced by the defendants, as set forth in paragraph eight of this answer.

(11)

The defendants deny each and every one of the allegations contained in paragraph 11 of the complaint.

(12)

The defendants deny that the penalties imposed by the said statutes (said 1938 Act) are severe, as alleged in paragraph twelve of the complaint, but admit that, unless [fol. 37] enjoined, the defendants will enforce the provisions of said statutes in the manner construed by them as set forth in paragraphs 4, 8, 15, 16 and 17 of this answer, though they deny that if not enjoined they will enforce said statutes in all respects as construed by the plaintiffs in their complaint.

(13)

The defendants deny the allegations contained in paragraph thirteen of the complaint.

(14)

The defendants further answering allege that the word "premium" or the words "insurance premiums" as employed in the complaint, and in this answer, and in the statutes herein involved, are descriptive of the total amount of money required to be paid to a company by an insured as the consideration for the insurance policy or contract; that such premiums are arrived at by the defendant companies in this suit, as well as by other like companies, by establishing a sum of money as a rate to be charged for the protection furnished. The premium rates differ according to the classifications of property and business interests protected, and in each class are primarily based on the loss ratio or experience for that class compiled over a period of preceding years. To this loss cost or loss factor is then [fol. 38] added, (a) a certain sum for home office and company expenses, (b) another sum for taxes, (c) another sum for claim expenses, (d) another sum for field supervision cost, and (e) a final sum for production commission cost. These various sums when added together constitute the total premium to be charged for the protection contracted for. The individual plaintiffs, who are branch managers, are compensated on a salary basis, and their compensation is properly and customarily allocated to that factor or portion of the total rate which is designed to cover office and company expenses. It would be inconsistent with the principles upon which premium rates are built up and formulated for them to receive any portion of the insurance premium, except out of that factor. The factor of commissions included in the rate has in actual practice never been, and cannot properly be, applied to the compensation of those company representatives who are compensated on a salary basis. The commission factor in the premium rate is always a percentage of the total rate or premium, and a percentage of the premium cannot be reconciled with a fixed salary. Therefore, the branch manager plaintiffs cannot, consistently with the principles on which the amount of the premium is arrived at, receive any portion of the percentage commission factor in said rate or premium.

The defendants aver that these principles of rate making enter into and are given effect in the classification of agents and in the other statutory provisions challenged in the complaint.

[fol. 39] (15)

The defendants deny that the provision for premium collection contained in section 4226a of the Code has been enforced or construed by them as requiring a "Resident Agent" to personally collect, or personally see to the collection of, the full premium on any contract, as alleged in paragraph 10(c) of the complaint. On the contrary, the defendants construe said section as intended to prohibit the practices of rebating and free insurance, with the resulting burden on those who do so pay; and in enforcing said provision they consider same to have been complied with whenever a contract is delivered, either by a "Resident Agent", or any other bona fide authorized representative of a company, either within or without the State, under circumstances showing an expectation, in good faith, on the part of the person delivering the policy that the full premium will be paid "within a reasonable time thereafter".

(16)

The defendants deny that they have construed, are construing, or will construe or enforce the provisions of the statutes contained in the 1938 Act, referred to in the complaint, in the manner alleged in the complaint, but aver that they will enforce same in accordance with the following interpretations, which are defendants' interpretations of said statutes:

(a) Contracts are made "through regularly constituted and registered agents or agencies of such companies" as required in Code section 4222 when such contracts are [fol. 40] countersigned by a "Resident Agent" as required by said section, even though he does not negotiate the contracts or deliver same, or collect the premiums;

(b) The making of the contract in this manner "through" such a "Resident Agent or Agency" imposes on such agent or agency the same obligations with respect to supervising the contents and form of the contract, and with respect to future services to be rendered during the life of the contract, both to the assured and to the company, in connection therewith, as customarily apply in cases where the "Resident Agent" himself negotiates a similar contract;

(c) A "Resident Agent" may lawfully countersign a contract at the request of his company or its "Branch

Manager", or any other "Company Representative" or nonresident officer, though the officer be not licensed as a representative. In such a case the contract is made "through" such "Resident Agent".

(d) A "Resident Agent" may lawfully countersign a contract at the request of any licensed, registered "Resident Agent" or licensed "Non-Resident Broker", and may pay to any such broker as much as one-half of his commissions on said contract;

(e) A "Resident Agent" through whom a contract is made, (as in [a] supra), must receive the full amount of the commission which he customarily receives on similar contracts, whether the contract is negotiated by the "Resident Agent" through whom made, or negotiated by the company, or by a non-resident agent or broker for the company.

[fol. 41] (f) A "Resident Agent" through whom a contract is made, as above set out, may not lawfully rebate to the insured any part of his commission, or pay any part thereof to any person, whether a resident of Virginia or not, unless such person is licensed and registered in Virginia either as (1) a "Resident Agent" or (2) a "Non-Resident Broker";

(g) A company is not prohibited by Virginia law from making in other states Virginia coverage contracts, or from availing itself of the services of unlicensed non-resident agents or brokers in negotiating same through such agents or brokers, or from paying commissions for such services, provided the contract is made "through" a Virginia "Resident Agent", as in (a) supra.

(h) A Virginia non-resident broker's license confers on the licensee the privilege of soliciting in Virginia either companies, or prospective assureds, or both, to make contracts; and also the privilege of making contracts so secured, or secured through negotiations outside of Virginia, through Virginia "Resident Agents" as set out in (a), supra, and renders such licensee eligible to receive from such "Resident Agents" as much as one-half of the commissions received by such "Resident Agents", on any contract made through such "Resident Agents" as in (a) supra.

(17)

The defendants aver that the Virginia statutory classification of persons engaged in that branch of the insurance, [fol. 42] casualty and surety business which is related to the procurement or production of policies or contracts, grows out of and is based on the well known customs, usages and practices of the business, as is more specifically set out in paragraph 2, supra. That pursuant to the Code sections and statutes contained in said 1938 Act, referred to in the complaint, as construed by the defendants, the State, acting through the defendants, issues five separate licenses, or certificates of registration. These fall into two main divisions; first, persons who are employed by a company or group of affiliates as their own representatives on a salary basis and who neither before nor after the passage of said Act have been compensated on a commission basis, and are not now being so compensated.

There is only one type of license issued to representatives of this type. It is denominated a "certificate" authorizing the holder thereof to act in the capacity of a "State Agent, Special Agent or Company Representative". The "Branch Manager" plaintiffs are "Company Representatives" and are holders of certificates of this kind. This same certificate is also issued to what are generally known as, and defined in the said statute as, "State Agents" and "Special Agents".

Defendants aver that, construing the aforesaid statutes in the light of the said well established customs, usages and practices of the business the general obligations, duties and functions of these three types of company representatives are as follows:

(a) A "State Agent" is one who travels about over the state looking after certain interests of the company which he represents, such as appointing "Resident Agents" for [fol. 43] the company; instructing them in regard to the special facilities his company has to offer in the various lines of insurance as compared to other companies; assisting the "Resident Agent" in the inspection of risks; attending to the prompt collection of company balances from local "Resident Agents" which they are due to remit for premiums collected; soliciting the resident agents to place risks with his company in cases where the resident agent represents other companies also; and attending to matters

of like nature involving the company's interest as distinguished from the interests of the insured. He reports to the home office or a regional office. He is compensated exclusively on a salary basis. The state agent usually has also control and supervision of any "Special Agents" that may be working for his company in that state. While the "State Agent" may solicit "Resident Agents" as above set forth, he has no authority under his license to solicit a prospective assured, though he may assist a "Resident Agent" in doing so, but he may not receive any part of the commissions.

(b) A "Special Agent" is one who travels about the state doing work quite similar to that of a "State Agent", and occupies a status as an assistant to the "State Agent". He is under the supervision of the "State Agent". The "Special Agent" may or may not be a resident of the state in which he works, and may work in two or more adjoining states. Like the "State Agent" he is compensated exclusively on a salary basis.

(c) A "Branch Manager" is the local representative of a company, and manages the company's office, which is [fol. 44] maintained and operated at the company's expense; while he may rarely solicit prospective assureds, when he does so he is acting in the character or capacity of assisting a "Resident Agent", and the latter is the one who must close the contract, countersign same, and receive the commissions payable for producing the contract. The aid in soliciting which the "Branch Manager" renders the "Resident Agent" is usually for the purpose of inducing the "Resident Agent" to place the contract with the "Branch Manager's company instead of with some other company the "Resident Agent" represents. The "Branch Manager" possesses the authority to appoint "Resident Agents", and supervise them. His general duties are to attend to or supervise all the business of the company in the state except the actual producing of contracts, and the settlement of claims or losses. He does not receive any commission, but is compensated solely by a salary, and his compensation is represented by a different factor in the premium rate from that which covers commissions for a "Resident Agent". His compensation is included in that factor of the total premium designed to cover home office, or company expense. He represents only one company, though in some cases

where a parent holding company divides its business into subsidiary companies, he may represent a group of such affiliates.

The "Branch Manager" also represents the company in supervising the nature of risks contracted for by the "Resident Agent" to the end that the company shall not thereby be subjected to any improper hazards. He also supervises the keeping and auditing of the company's accounts, books and records in the branch office.

[fol. 45] And the defendants aver that the second class of persons engaged in the business of procuring or producing insurance policies or contracts are those who occupy a status similar to independent contractors, and the respective licenses or certificates issued by defendants, in their official capacities to persons classified in said second group, and their general duties, obligations and functions as interpreted by the defendants, are as follows:

(d) A "Resident Agent" is a resident of Virginia who maintains his own office in Virginia. He primarily performs the functions of a producer of business or premiums. He usually represents several insurance companies. He solicits prospective assureds and, when successful, usually has the choice of placing the contract with any one of the companies he represents, or he may place same with a company he does not represent through a "Resident Agent" of such other company. Either he or another "Resident Agent" must countersign the contract before it can become legally effective. He is the legally recognized owner of the business solicited and developed by him, and usually controls the renewals of these contracts. He keeps a watch over the property or other subject of the coverage, and advises the assured with reference to contract and rate changes to meet changing conditions, and assists him in securing same. He appears before rate making bodies in the interest of the adoption of fair and just rates and classifications of risks. He confers with the assured so as to prevent possible violations of contract conditions and provisions. He acts as a mediator between the company and the assured and, [fol. 46] in the event of a loss or of disagreement, uses his best efforts to the end that the obligations of the contract shall be justly and fairly performed. He has no power to appoint other resident agents. He is compensated for his services solely on a commission basis, receiving a percent-

age of the total premium. This commission is provided for as a separate factor in the total premium. He may not divide his commissions or pay any part thereof to any person except to another Virginia resident agent, or a nonresident broker licensed to solicit contracts in Virginia.

(e) "Resident Agency".

This license or certificate entitles a partnership or corporation, composed of a group of "Resident Agents" to transact the same business as a "Resident Agent".

(f) "Solicitor".

A "Solicitor" is one employed by a "Resident Agent" to solicit insurance policies or contracts. He is compensated on a commission basis, receiving a percentage of the commissions produced by him. The policies or contracts he produces must be made "through" the "Resident Agent" employing him, and can be countersigned only by a "Resident Agent". The "Solicitor" may perform such other functions of a "Resident Agent" as may be required or approved by his employer.

(g) "Non-Resident Broker".

The license or certificate of a "Non-Resident Broker" confers on such nonresident the privilege of soliciting policies and contracts of insurance inside the borders of Virginia, and also authorizes the licensee to negotiate such [fol. 47] policies and contracts "through" "Resident Agents", and receive as much as one-half of the "Resident Agent's" commissions. The licensee is also authorized to negotiate through "Resident Agents" Virginia coverage policies and contracts secured by the licensee as a result of his solicitation outside the state, and to receive a like part of the resulting commissions.

(18)

The defendants aver that the foregoing interpretations by the defendants of the statutory classification of persons engaged in the production division of the fire insurance, casualty insurance and surety businesses is a proper and reasonable classification and is based on the customs, usages and practices which have prevailed for many years in Virginia as well as generally throughout the United States.

(19)

The defendants aver that the omission from said statutes of a resident broker's license or certificate is proper and reasonable; that during the five preceding license years ending April 30 of each year the number of persons licensed as resident brokers has been as follows: 1935, three licensees; 1936, three licensees; 1937, three licensees; 1938, five licensees, and 1939, four licensees. The defendants further aver that said licensees, with few exceptions, have been engaged primarily in some form of financing or similar business, and the holding of the broker's license has [fol. 48] permitted said licensees to receive a part of the agents' commissions on policies and contracts the licensees were thereby enabled to place, resulting in many cases in a modified form of rebate, which is contrary to the public policy of the Commonwealth of Virginia.

(20)

The defendants aver that all contracts of insurance and surety which the plaintiff companies make outside of Virginia, which cover property, persons or risks in Virginia, are made in the exercise of the privileges and franchises granted to them as licensees of the Commonwealth to transact their respective businesses therein. All such contracts contemplate the possibility, a large percentage of them the probability, and many of them the certainty that said companies, as well as the assureds, will perform acts in Virginia in connection with said contracts and with the obligations assured thereunder. Particularly is this true in the cases of contracts requiring inspections or inspection service. In all cases where a loss is incurred, it is contemplated that the plaintiff companies may investigate the circumstances and conditions under which such loss occurs or an event happens which results in consequent liability upon the company. And the defendants aver that it has been the customary practice of all companies engaged in businesses similar to those of the plaintiff companies to do and perform, in connection with said contracts, acts in Virginia of [fol. 49] the nature which are above alleged as contemplated in the making of said contracts.

(21)

The defendants are advised and aver that every one of the United States has enacted laws which require insurance

and surety contracts covering risks therein, made by licensed foreign or alien companies, to be countersigned by a resident licensed agent of the state, and the laws of Virginia have so provided for many years. The purpose of this requirement has been to encourage the association of local Virginia commission agents with nonresident agents and brokers in the making and servicing of such contracts, and thus not only to prevent such Virginia agents from being deprived of their fair share of legitimate Virginia business, but to secure for the benefit of all persons contracting for protection against risks in this State the services of a resident impartial agent who owes a duty to protect the interests of the assured as well as those of the company. This service, the defendants aver, cannot be properly and efficiently performed by a nonresident agent or broker, or by a company branch manager or other salaried representative.

Defendants aver that it has been the experience in Virginia that the statutory provision prior to 1938, which permitted Virginia "Branch Managers" to countersign the contract has proven wholly ineffectual and has failed to accomplish the desired purposes of associating an impartial agent with the transaction. It is only by a requirement, such as that contained in said 1938 Act, by which the countersignature of a local commission agent is made necessary, [fol. 50] that the protection which the public policy of Virginia requires can be adequately afforded the agent and the assured. And the defendants aver that it was to carry this public policy of the State into effect that the statutes were amended in 1938 so as to require such countersignature.

(22)

The defendants aver that the business of soliciting insurance policies and contracts of the type embraced within the statutes challenged in the complaint is a paramount business in Virginia; that there are many thousand "Resident Agents" engaged in said business and their earnings amount annually to many millions of dollars; that said agents employ many persons as solicitors, stenographers and clerks; that many thousand persons, to-wit, fifty thousand, including said agents and employees and their families are dependent upon the commissions received from soliciting such insurance contracts for their livelihood, and

that many millions of dollars are invested, and must be invested in the office plants and equipment of said "Resident Agents" in order for them to be able to render proper and efficient service to their clients, and to the public generally, in connection with contracts made through them.

The defendants further aver that the interests and general welfare of the Commonwealth of Virginia, and the happiness and prosperity of her citizens, are materially and vitally affected by the failure or success of the persons engaged in soliciting said insurance contracts, as aforesaid, [fol. 51] and will be materially promoted by the prosperity of their said business.

The defendants further aver that the practice which has been followed by the plaintiff companies of entirely eliminating the Virginia "Resident Agents" from participation in a very large part of the most profitable business of this kind, and of making the choice insurance contracts covering Virginia risks through nonresident brokers and agents not licensed in Virginia, and permitting said nonresidents to receive all the commissions resulting from such contracts, is harsh, unfair and unjust to their Virginia "Resident Agents", has been the source and cause of much dissatisfaction and disagreement between them and their said companies, and has proven harmful, detrimental and partially destructive of said agents' businesses in this State.

The defendants further aver that during a period of approximately nine years business and economic conditions in Virginia have not been prosperous, but have been such as to bring about much hardship, deprivation and poverty, so that it has been necessary for the State to expend many millions of dollars for relief to the unemployed, and that this condition would have been materially alleviated and additional employment provided if the plaintiff companies and other insurance companies licensed in Virginia had not followed the unjust, unfair and discriminatory practice of eliminating the said Virginia "Resident Agents" from participation in said choice Virginia coverage insurance and surety contracts. The defendants further aver that the amount of the commissions which thus unfairly and un- [fol. 52] justly have been diverted from "Resident Agents" of Virginia, and — which they, and others who would have been able to engage in the business, have been deprived, is many millions of dollars, the deprivation of which has ma-

terially retarded the recovery of prosperity in the State, and has operated to the detriment of the State and her welfare and that of her citizens.

Wherefore, these defendants pray that no temporary or permanent injunction be issued in this action against the enforcement of any portion of the provisions of said 1938 Act; that said Act of 1938, and each of the provisions thereof be adjudged as not contrary to or in violation of the Constitution of the United States; that no provisions of said Act be adjudged as void and of no effect; and that said action be dismissed with costs to the defendants in this behalf sustained.

(Sgd.) Abram P. Staples, Attorney General of Virginia, and as such Attorney for the Defendants, State Library Building, Richmond, Virginia.

[fol. 53] IN UNITED STATES DISTRICT COURT

January 5, 1939.

Honorable Robert N. Pollard, United States District Judge, Richmond, Virginia.

DEAR JUDGE POLLARD:

Counsel in the case of Osborn v. Ozlin will hand you a form of order which has been drawn to meet their wishes, and which I have signed, postponing the hearing from February 1, until March —, 1939. We suggest that the case be set for Monday, March 13, if this is convenient to you and to Judge Way. This will give sufficient time for the taking of the depositions and will also allow a sufficient interval before the convening of the April Term of our Court on April 3 for the preparation of an opinion. Will you please fill in the 13th day of March, if it suits you, and communicate with Judge Way.

I have taken the liberty of saying to counsel that we do not want to consider the case on ex parte affidavits, but desire to confine ourselves to depositions, regularly taken, with witnesses subjected to cross examination, and that it will be satisfactory to us if the testimony is taken prior to the hearing in the form of depositions whether the witnesses reside in Virginia or not. I have also requested counsel to get all of the evidence in shape so that as far as may

be, it will not be necessary to take further testimony after the hearing; if it appears at the hearing that other evidence is needed we can then decide what form it shall take.

I have also requested counsel to file briefs on both sides and have them in our hands a week before the hearing.

With kind regards, I am,

Sincerely yours, (Signed) Morris A. Soper.

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR HEARING, ETC.

Entered and filed Jan. 10, 1939

The undersigned judges, having been organized as a three judge court under the order of the Honorable Robert N. Pollard, District Judge of the District Court of the United States for the Eastern District of Virginia, which was entered on the 5th day of December, 1938 to hear and determine the application of the plaintiffs herein for an interlocutory injunction, and said order providing for the convening of the court on the 1st day of February, 1939, and counsel for the defendants desiring further time for the taking of testimony and the filing of depositions herein prior to the hearing, and counsel for the plaintiffs stating that he desires to press his application for an interlocutory injunction, and to be heard thereon as soon as practicable, and in the meantime that the restraining order shall stay in effect, it is ordered this 10th day of January, 1939:

That the hearing on the motion for an interlocutory injunction be postponed until the 20th day of March, 1939, and that the temporary restraining order heretofore granted herein by the Honorable Robert N. Pollard, District Judge, on the 5th day of December, 1938, shall continue in effect until the further order of the said three-judge court.

(Signed) Morris A. Soper, United States Circuit Judge. Luther B. Way, United States District Judge. Robert N. Pollard, United States District Judge.

[fol. 54a] IN DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

WILLIAM H. OSBORNE, et als., Plaintiffs,

v.

THOS. W. OZLIN, et al., etc., et al., etc., Defendants

Before Soper, Circuit Judge and Way and Pollard, District Judges

OPINION

SOPER, Circuit Judge:

The bill of complaint in this case prayed that the State Corporation Commission and the Commissioner of Insurance of the State of Virginia be enjoined from enforcing the provisions of Ch. 218 of the Acts of the General Assembly of Virginia of 1938 on the ground that the Act violates the Constitution of the United States, so that an enforcement thereof would deprive the plaintiffs of their constitutional rights. A temporary injunction pending final determination and a permanent injunction were prayed. Accordingly, a temporary restraining order was passed, and the court was organized to hear and determine the matter in controversy. Testimony was taken and arguments of counsel heard, upon which the court has made the findings of fact and conclusions of law herein set out.

The statute amends and reenacts Sections 4222, 4226-a and 4235 of the Code of Virginia relating to insurance, adds new sections as follows: Section 4221-a, defining certain terms, Section 4235-b, requiring registration of solicitors, and Section 4235-c, exempting certain reciprocal or inter-insurance exchanges from the provisions of the Act. Section 168 of the Tax Code of Virginia is repealed. Sections 4222 and 4226-a are the objects of attack in this suit.

Section 4222 forbids insurance companies, legally authorized to do business in Virginia, except life, title and ocean marine insurance companies, to make contracts of insurance or surety on persons or property therein except through regularly constituted and registered resident agents, and provides that no such contract shall be written, issued or delivered unless it is duly countersigned by a resident agent. No state agent, special agent, company repre-

sentative or other salaried officer or manager of an insurance company, except a mutual insurance company, is permitted to countersign any contract of insurance or surety.

Section 4226-a provides that no resident agent may write, countersign or deliver any contract of insurance or surety upon persons or property in the state, unless there be collected at the time of writing or delivery, or within a reasonable time thereafter, the full premium on the contract, and the resident agent shall be entitled to and shall receive the usual and customary commissions allowed on such contract. A resident agent is not permitted to write a contract produced by a non-resident broker not licensed by Virginia, and may not pay a licensed non-resident broker more than fifty per cent of the resident agent's commissions. A non-resident broker is any non-resident who solicits for compensation contracts of insurance or surety on persons or property located in the state, except contracts of life, title or ocean marine insurance.

Section 4221-a defines an "agent" as any individual, who solicits, negotiates or effects on behalf of any insurer, contracts of insurance or surety; and defines a "resident agent" or "resident insurance agent" as an individual whose residence and principal place of business are located within the state, and who is authorized to transact business as an insurance agent and to contract in the name of the insurer. "State agent", "special agent" or "company representative" means any person who acts for and on behalf of an insurer in the solicitation, inspection or servicing of risks assumed by the insurer. These definitions do not apply to life insurance companies or life insurance agents.

[fol. 54b] Sections 4231 and 4180 of the Virginia Code subject an insurance company which fails to comply with the provisions of the statute to fines, or suspension or revocation of its license to do business in Virginia, or both.

The plaintiffs in the suit are thirty-four foreign or alien stock companies licensed to conduct in Virginia the casualty insurance or surety business, or both; and three individuals who have their residence and principal place of business in the state as salaried agents and Richmond branch managers of certain company plaintiffs. These individuals were licensed by Virginia as resident insurance agents prior to June 21, 1938, the effective date of the statute in question, and since that time have been licensed as

special agents or company representatives. The defendants are officials of Virginia, charged with the administration of the insurance law of that state. The National Association of Insurance Agents was allowed to intervene as amicus curiae.

From the evidence in the case offered to show the effects of the enforcement of the statute, we find the following facts with regard to the production and servicing of casualty insurance and surety contracts.

Production of Casualty and Insurance Contracts

Contracts are secured by persons known as producers, who solicit the public. The producer is either an agent or a broker, licensed by the state in which he acts. An agent is certified and sponsored by a company and, in a sense, is a representative of the company; but as he is paid a commission on the business he produces, which depends in large measure upon his influence in his community, and the services he renders his clients, he is to a great extent the agent of the insured. A broker, on the other hand, has no affiliation with any company. His obligation runs only to the insured; but like the agent, his success depends upon his salesmanship and his reputation and experience as an insurance man.

The producer must induce the insured to buy the insurance through him, and must inform the insured as to the exposure and the coverage. The producer must have the good will and confidence of the insured, particularly when the prospect must disclose confidential information as to his business bearing upon questions of exposure and coverage, as in workmen's compensation or surety contracts. The successful producer must have a sound technical knowledge of these questions, and often must procure special rates for his clients in order to hold their business. The solution of these questions may be a routine matter or a complicated task. Hence if they are determined, the procurement and acceptance of the policy, that is, the "underwriting", is the next step in the process, and if the producer is authorized to bind the company, he must determine on its behalf whether to make the contract.

Policyholders are regarded as the customers or clients of the producer. During the life of the policy he performs every service to build up and maintain a clientele. He ex-

tends credit for payment of the premium, explains the provisions of the policy to the assured, assists the filing and recovery of a claim of loss, and acts throughout as the mediator between the assured and the company.

Brokers are rarely found except in large cities. In New York they produce virtually all the contracts, for the demand for insurance is so concentrated and has assumed such tremendous proportions that insurance is bought rather than sold. The producer represents the buyer, and remains free of company affiliation in order to use the assured's concentrated bargaining power to its best advantage when dealing with the various companies.

The production process is the same when the contract is produced in one state to cover risks in another. Richmond agents produce insurance to cover risks in other parts of Virginia and in other states, and New York brokers produce contracts to cover exposures in all parts of the country. In fire insurance, it has been the custom for many years for the producer to associate with the contract and to split the commission with an agent who does business in the vicinity of the risk. There is no such custom in the casualty and surety business; a producer of casualty or surety contracts covering exposures in remote places usually relies exclusively on the company to service the contract, and a New York broker generally places the insurance with the company best able to do so. For this reason, a producer seldom insures against a risk with a company not admitted to do business in the state where the exposure exists.

Servicing the Contract

One of the most important services afforded assured is what is known as "servicing the contract", that is, the discovery and elimination of unsafe conditions, whereby the question of loss and the cost of insurance is diminished. [fol. 54c] For this purpose, the insurance company maintains a staff of engineers who inspect the risks covered by the company. The producer not only ascertains whether the assured is receiving proper attention from this servicing personnel, but also makes his own investigations and recommendations in order to reduce the client's rating and expense. These services by brokers and agents are an essential part of the production process in meeting the competition for business.

Field Supervision

Another essential part of the production process is known as "field supervision". The companies employ field supervisors to stimulate and guide the activities of local producers, to accept or reject orders for contracts from producers to underwrite, prepare and check contracts, to collect premiums and generally to represent the company in a particular territory. The two major classes of field supervisors are: (1) The general agent, who is licensed as a producing agent and is compensated solely by commissions based on premiums on contracts made by him or by producers appointed by him and acting under his supervision. In New York City, where most of the contracts are produced by brokers, the general agents do not appoint producers, for it is more profitable not to compete with brokers but to underwrite the insurance produced by them. General agents are men of knowledge and experience who devote their full time to the business. In Virginia, the general agents produce the bulk of the local business. (b) The branch office manager or salaried company representative who has the same powers and duties as the general agent, but is compensated by a salary and receives no commission for producing business. Whenever a branch manager negotiates a policy directly with an assured, the rule of the National Association of Insurance Agents, in which most insurers have acquiesced requires that the contract be closed through one of the manager's commission agents who is paid the full producer's commission. The manager's function is to develop his territory through ordinary producing agents and to supervise and assist them in the production of desirable business.

[fol. 54d]

Production Cost

The "production cost" of getting the business is divided into two factors: (a) "Acquisition Cost", or the commission paid the producing agent or broker. This commission, which varies in amount and is on the average of 13.5% of the premium, is normally the only compensation that the producer receives. It is allocated as the recipient sees fit. No stock company will negotiate a contract directly with an assured without paying a producer's commission either to a broker or a non-salaried agent. (b) "Field Supervision Cost", that is, the amount paid the general agent for field supervision, and the limit which the company may

spend for maintaining its branch offices. This factor is usually about 6.5% of the premium. When a general agent produces a contract, he is given the entire production cost. When a broker, solicitor or other commission agent produces a contract, he receives the acquisition cost, and the general agent or branch manager under whose supervision or within whose territory the producer is working receives the field supervision cost. The maximum amounts which may be paid these various individuals are regulated by an association known as the Acquisition Cost Conference, to which nearly all casualty and surety companies belong.

Non-Resident Production of Contracts Covering Virginia Risks

The practices described are followed in the production of policies outside Virginia to cover risks in that state. The statutory restrictions upon this business form the crux of this suit. From 10 to 20% of the total premiums of each company plaintiff for Virginia coverage is paid on contracts produced outside of Virginia, i.e., negotiated, ordered, underwritten, prepared, checked, executed, issued and delivered outside of Virginia. During 1937 twelve of the company plaintiffs received premiums of $410,967.62 on policies of Virginia coverage produced outside the state and paid commissions of $70,860.96 to non-residents for the production thereof. Ten of these companies (the figures for the other two are not available) during the first half of 1938 received $183,727.38 for such policies, and paid $31,635.53 to non-residents for this production. The total premiums paid to the plaintiff companies during 1937 on contracts produced outside Virginia amounted to approximately $1,371,574.

The party assured by a policy produced outside of Virginia is occasionally a natural person who keeps his records and manages his business outside the state, and has interests in Virginia and elsewhere. But ordinarily, the assured is a large national corporation, incorporated in any of the states, with its central office in New York, Chicago or some other great business center. One company plaintiff insures a mercantile corporation against the risk of public liability arising from the operation of 258 stores scattered throughout Virginia. Nation wide manufacturers, distributors, financial institutions, contractors, dairy companies,

public utilities and others purchase contracts outside of Virginia to cover exposures which they have in that state. These contracts are produced almost exclusively by brokers operating in large cities where the national corporations have their principal offices, and the great majority of this business is produced in New York City, which has become the center for the insurance business in this country. Many of these out-of-state producers are licensed by Virginia as non-resident brokers.

Practically all of the policies produced outside Virginia and insuring persons or property therein are what may conveniently be called multiple-coverage, hot-potch or master policies, for the reason that they insure against numerous exposures of the same type which are usually situated in other states as well as Virginia. It is unusual for different lines of insurance, such as fire, workmen's compensation, automobile or burglary, to be combined in the same contract.

It is as important that the insurer be licensed to do business in Virginia when a contract for Virginia coverage is produced in another state as when it is produced by a resident agent. The fact that a company is licensed to do business in the state of coverage is an important factor in the placing of insurance, for if the insurer does not have such a license, the assured loses the benefit of all company services in the state of the exposure, which is the very place where he needs them most, and the assured also can not sue to recover a loss in that state.

The Reason for Out-of-State Production

An individual non-resident, subject to exposures in Virginia, is likely to purchase his insurance through a friend at his residence or place of business. The officers of a national corporation are also influenced by this personal element; but the chief reason for the concentration of their insurance buying in New York or other large center is the reduced cost. A great number of large corporations em- [fol. 54e] ploy high salaried officers, whose sole function is to handle their insurance because advantages inher in the concentration of insurance buying as in the mass purchase of commodities. The average rates for fidelity insurance is 50¢ per hundred; but if a bond for millions of dollars is

purchased to cover the employees of a nation-wide chain of stores, then the rate is 25¢ or 30¢ per hundred.

The solution of the insurance problems of an assured subject to numerous exposures is greatly facilitated by the centralization of insurance buying. It is easier to insure against many risks by the procurement of one policy and the payment of one premium therefor; and the assured is better able to place the responsibility for proper coverage of its risks in its insurance manager.

Other conveniences and economies result from the centralization of insurance buying. In many localities of exposure, there are no resident agents capable of handling a large corporation's insurance. Such a corporation does not have in the localities of its exposures representatives authorized and qualified to attend to its insurance matters, or the records necessary for transacting the business. Multiple coverage policies are usually rated on the accident and loss record for the combined risks, and such rating cannot be determined properly if each exposure must be insured separately through local resident agents.

The controlling reason, however, for the out-of-state production of hotchpotch or master policies covering persons or property in Virginia is the lower rate obtained for Virginia risks. This result is accomplished by some form of special rating, e.g. "retrospective rating", whereby the premium is retroactively reduced or increased, according to the favorable or unfavorable experience of the risk; "experience rating", which is based upon the application of an inflexible formula to the history of the losses of the assured, or "equity rating", which involves some flexibility of judgment in the formulation of rates lower than those developed by a fixed formula, and usually includes some reduction in the amount of the producer's commission. Reduction in the cost of the insurance of a large corporation is sometimes secured by inviting the brokers to make competitive bids. The broker usually gets the business who offers the best price, and he frequently contributes to this result by reducing the customary commission. In general, the lower premiums involved in the "rating" and "pricing" of policies of large corporations are the result of quantity purchasing, improved loss experience from scientific servicing of risks, and intelligent underwriting of combinations of coverages.

Effect of Non-Resident Production in the State of Virginia

Insofar as inspection and engineering services preceding or accompanying the formation of a contract covering a Virginia risk are concerned, and insofar as the services of inspectors and adjusters are required in case of loss after the execution of the policy, there is no difference between a contract produced within and a contract produced without the state. The ability of the company to perform the services in the state of coverage necessarily affects the placing of the insurance.

The production of from 10 to 20% of Virginia coverage outside the state is of course attended by a loss of business and of revenue by insurance agents resident in Virginia. In 1937 $9,143,833 was paid in premiums on casualty and surety contracts covering Virginia risks. Producers' commissions at 13.5% amounted to $1,234,417; and assuming that 15% of the coverage was produced outside the state, the resident agents of Virginia lost $185,161 which they would have earned if the business had been produced within the state.

[fol. 54f] Producers in New York and other large business centers, by reason of their location, have a great competitive advantage over the Virginia agents. The latter do not have the opportunity to acquire the information and experience that will acquaint them with the insurance market and render them expert in the rating and underwriting of multiple risks. A statutory requirement compelling the association of the resident agent with all Virginia risks would tend to overcome the handicap under which he now labors.

Under present out-of-state production technique, Virginia casualty and surety companies, not doing business on a national scale, cannot compete with large foreign corporations for 10 to 20% of the insurance on persons and property within the state, since the small domestic companies cannot offer reduced premiums on hot-potch and interstate contracts with Virginia coverage included.

The interests of Virginia residents, merchants, industrialists and business men, who are not subject to numerous risks in various states, are also affected. These persons compete with national corporations for Virginia business and are handicapped by being required to pay more for their Virginia insurance than their large competitors who buy hotchpotch policies outside the state. The local grocer,

for example, pays more for his insurance than does the chain store.

Out-of-state production of insurance contracts makes more difficult the enforcement of the insurance laws of the state. Virginia has many statutes relating to the casualty insurance and surety business. No foreign corporation may make such contracts on persons or property in Virginia unless it obtains a certificate of authority to transact business from the Virginia Corporation Commission by filing two copies of its charter, paying the requisite entrance fee and fulfilling certain other statutory requirements. Virginia Code Sections 3847 and 4176. The Commission may prevent any insurance or surety company, which is insolvent or fails to comply with any provision of law, from doing business in Virginia. Section 4180. No insurance company or agent shall pay, or allow, as an inducement to have any contract of insurance or surety issued, any rebate of premium or any special favor or inducement not specified in the contract. Section 4222-c. Every company issuing workmen's compensation or automobile insurance or contracts of surety must file schedules of its rates with the Corporation Commission and procure its approval of the same. If, upon a hearing, the Commission feels that the rates proposed by any company are unfair, unreasonable or discriminatory, then it may prescribe a different schedule of rates. Section 1887 (75), 4326-a-1, 4350-3. In these three lines where rates for Virginia coverage are fixed by law, "equity" and "retrospective" ratings are not allowed. Automobile liability policies issued to public carriers must be filed with the Corporation Commission, and workmen's compensation policies must be filed with the Industrial Commission. All of these laws apply to insurance produced outside the state as well as to contracts produced within.

The out-of-state production of Virginia coverage makes it difficult to enforce certain of these laws, particularly those dealing with insurance rates. A good example of virtual nullification of Virginia's rate fixing statutes is a contract covering risks in various states and rated on an interstate basis, such as a policy covering risks in Virginia and West Virginia. If West Virginia does not regulate the rate, it is easy to dilute the Virginia fixed rate by setting an arbitrary figure as the price for the West Virginia coverage. In the same way, retrospective rating applied to the West Virginia coverage can in effect operate to reduce the premium for

the Virginia coverage. Thus an interstate rate may result in great savings to the assured, in spite of the fact that it is against the law of Virginia for the assured to be granted such reductions. It is equally difficult to enforce the law (Code Section 4222-c) against rebates and special favors when the policy is produced beyond her borders. In a contract covering risks in Virginia and other states, it is easy to grant a rebate and attribute it to risks in states other than Virginia when, in reality, but for the rebate or favor, the contract would not have been purchased. In the absence of some one within her jurisdiction connected with the production process, it is difficult for Virginia to prevent violations of these statutes.

The Probable Effect of the Resident Agent Requirement of the Act of 1938

In estimating the effect of the Act upon the insurance business, the experience of Virginia, under prior acts passed for the same general purpose should be considered. The Acts of Virginia of 1895-6, p. 258, required in effect that contracts for fire insurance on property in Virginia should be made through resident agents. The Acts of 1902, p. 738, made similar provision for casualty and surety contracts covering Virginia risks; and the codification by the Acts of [fol. 54g] 1906, p. 122, sections 34 and 38, required all insurance on persons or property in the state to be placed through resident agents. In 1921, the foregoing legislation was interpreted by the State Insurance Commissioner to require that all insurance on persons or property within Virginia should be issued under a policy separate from insurance on persons or property in any other state; that if the Virginia risk should be covered under a general cover contract form, it should include only Virginia property; that the rates should be those applicable to risks covered as published by the Rating Bureau of which the insurer was a member; and that the policy should be issued through and signed by a resident agent who should receive the usual commission, but this last provision did not apply to company employees who received a fixed salary. See also the Acts of 1936, p. 169.

Prior to the Act of 1938, the resident agent who countersigned a policy produced outside the state performed no useful function in the production, underwriting or servicing of the contract. The plaintiffs' brief states: "Companies

have never observed the mandate of the statute not to make contracts (outside of Virginia) except through licensed Virginia agents. * * * When, because of the compulsion of the law of a state of coverage, the company must secure the countersignature of a licensed agent there, he may countersign only a 'law rider' or a 'countersigning endorsement'. He may sign one of a number of 'underlying contracts' retained by the company, while a 'master contract' is delivered to the assured." Customarily, contracts produced outside of Virginia have been countersigned by the general agents and branch office managers without compensation. They have not performed any of the services habitually offered the assured by a resident producer; but these services have been rendered by the non-resident producer and by the companies' salaried employees, such as engineers and adjusters, particularly the latter, when the matter has been one that could not be handled by a producer remote from the locality of the coverage. Prior to the Act of 1936, the Virginia resident agent statute requirements have had no real effect on the production of the contracts.

The Act of 1938 is more drastic than its predecessors, in that it requires that the resident agent be paid and retain at least one-half of the customary commission, and forbids a salaried representative of the company to countersign the policy. The Act will not affect the production of insurance contracts covering a single or a small number of risks, since these are placed almost entirely through resident agents, but it will substantially affect the production of hotchpotch or master policies outside the state, since in every case at least 50% of the acquisition cost thereof must be paid to a Virginia agent. Thereby the cost of the insurance on Virginia risks will be increased; for if the assured buys directly from a Virginia agent, he will lose the great advantage inherent in the concentration of his buying power; and if he buys from a non-resident broker, he must pay a commission both to the broker and the resident agent. The amounts now paid the out-of-state producer are not shown to be excessive, and it is not to be expected that he will render the same services for one-half of the compensation.

Whether or not, in view of the Act of 1938, Virginia risks will still be covered by master policies produced outside the state depends on whether the advantages for purchasing the insurance in New York or other business center will

outweigh the increased cost of the Virginia insurance. The probability is that in many cases, the saving will still exceed the increased expense unless the Act prevents the cutting of rates denounced by the Virginia statutes. For example, if the usual rate of 50¢ per hundred on a fidelity bond is reduced to 25¢ per hundred in the case of a Five Million Dollar fidelity bond of a chain store organization, as the evidence indicates, the reduction in cost of the Virginia coverage would far exceed one-half of the usual commission which the resident agent is required by the statute to retain.

Under the practice prevailing prior to the passage of the Act of 1938, the countersigning by a salaried representative of the company of a policy produced outside the state was only a perfunctory act, unaccompanied by any service to the assured or by any compensation to the signer. It does not follow that the same practice will prevail under the present statute which requires the retention of one-half of the commission by the resident agent. On February 13, 1939, the Virginia Association of Insurance Agents, Inc., passed a resolution with reference to the Act wherein it was declared that in all cases where a Virginia agent is associated in writing a Virginia fire, casualty or surety policy, he shall familiarize himself with all the pertinent facts relating thereto, examine the policy to ascertain whether it is correct as to rate and coverage and best adapted to the needs of the assured, and throughout the life of the policy render the same obligation to the assured with respect to servicing the contract as if the Virginia [fol. 54h] agent alone had negotiated the contract. On February 27, 1939, the chief examiner of the Virginia Insurance Bureau made an interpretation of the statute, wherein he held that a Virginia resident agent, countersigning a contract, has imposed upon him ipso facto "the same obligations with respect to supervising the contents and form of the contract, and with respect to future services to be rendered during the life of the contract, both to the assured and to a company plaintiff in connection therewith, as customarily applied in cases where the resident agent himself negotiated a similar contract."

[fol. 54i] This resolution and this interpretation were offered in evidence by the defendant, and were objected to by the plaintiffs as nothing more than self-serving arguments as to the meaning of the statute, promulgated after the institution of the pending suit on November 10, 1938.

We are in accord with the view that these documents should have no weight in determining the controversy, except insofar as they constitute arguments on the part of the defendants as to the interpretation of the statute, and its probable effect. Considered in this way, they are not without some persuasive force. It is true that the plaintiff companies and the assureds have been content with the prior practice, and have felt no desire or need for the services of the local agent in the production and servicing of master policies; if the local agent must be paid one-half of the commission, he will doubtless be called upon to render such services as he may be qualified and able to perform, even though the statute merely provides that the contracts shall not be made except through resident agents and except with their countersignature thereon. Such agents could be of assistance in checking the coverage and premium, servicing the contract, adjusting claims of loss, and acting in general as the mediator between the assured and the insurer in the locality of the exposure.

The plaintiff objected to evidence offered by the defendant as to certain customs in the fire insurance business with reference to a payment of a share of the commission to the Virginia agent in case of a contract produced outside the state covering a location therein. From 5 to 10% of the amount of the premium has been customarily paid to the local agent, regardless of the connection or lack of connection of the agent with the transaction. In our opinion the evidence was material, and the objection should be overruled. Conditions with reference to casualty and surety insurance differ from those that prevail in fire insurance, but nevertheless the evidence of the custom voluntarily adopted in one line has some bearing on the reasonableness of the Act which imposed a similar custom as a duty on another line of the same general business.

The plaintiffs contend that the statute is invalid because it attempts to regulate the making, outside of Virginia, of contracts of insurance, in that it provides that insurance companies shall not make contracts of insurance or surety on persons or property within the state except through regularly constituted and registered resident agents; and that no resident agent may write, countersign, issue or deliver any such contract, upon persons or property within the state, unless there shall be collected the full premium on the contract; and that the resident agent shall be entitled

to, and shall receive the usual commission, and shall not allow or pay to any licensed non-resident insurance broker more than 50% of the commission. It is said that the State of Virginia, by the passage of the Act which applies to contracts executed without the state as well as contracts executed therein, assumes the right to exercise beyond its territorial limits legislative authority which exceeds the limitations imposed by the federal constitution; and that the Act is not saved by the fact that the contracts of insurance to which it relates cover exposures and involve acts of performance within the state.

It is a well established general principle that the due process clause of the Fourteenth Amendment "denies to a state any power to restrict or control the obligations of contracts executed and to be performed without the state, as an attempt to exercise power over a subject matter not within its constitutional jurisdiction"; and this is true although one of the contracting parties is within the state. Alaska Packers Ass'n v. Commission, 294 U. S. 532, 540. This principle has been applied to statutes affecting contracts of insurance executed beyond the confines of the state; Allgeyer v. Louisiana, 165 U. S. 578; St. Louis Compress Co. v. Arkansas, 260 U. S. 346; New York Life Ins. Co. v. Head, 234 U. S. 149, 161; New York Life Ins. Co. v. Dodge, 246 U. S. 357; Fidelity & Deposit Co. v. Tafoya, 270 U. S. 426; Connecticut General Co. v. Johnson, 303 U. S. 77. It has been held that the mere residence within the state of an assured under a life policy executed outside the state, or the mere existence of property in the state covered by a policy executed outside the state, does not of itself empower the state to regulate or modify the terms of the contract or justify the imposition of tax on premiums. New York Life Ins. Co. v. Dodge, 246 U. S. 357; Aetna Life Ins. Co. v. Dunken, 266 U. S. 389; St. Louis Compress Co. v. Arkansas, 260 U. S. 346; Palmetto Ins. Co. v. Connecticut, 272 U. S. 295, 304; Compania De Tabacos v. Collector, 275 U. S. 87. But it does not follow that the state has no jurisdiction under any circumstances over contracts of insurance made outside of the territory which relate to subject matter within its borders or affect the interests of its citizens. The border line between what is permissible and what is not is not always easy to draw; but specifically, it has been held that a state tax upon premiums received by a foreign insurance company from business done without the state

may be assessed upon premiums paid to the company outside the state by the residents thereof. The tax was held to be a tax upon the privilege of doing business within the state. Equitable Life Society v. Pennsylvania, 238 U. S. 143. The court said: (146-7)

"It being established that the relation of the foreign company to domestic policy holders, constituted doing busi- [fol. 54] ness within the meaning of the statute, the question is whether the company may be taxed in respect of it, in this way, whatever it may be called. We are dealing with a corporation that has subjected itself to the jurisdiction of the State; there is no question that the State has a right to tax it and the only doubt is whether it may take this item into account in fixing the figure of the tax. Obviously the limit in that regard is a different matter from the inquiry whether the residence of a policy holder would of itself give jurisdiction over the company. The argument of the state court is that the Company is protecting its insured in Pennsylvania equally whether they pay their premiums to the Company's agent in Philadelphia or by mail or in person to another in New York.

These are policies of life insurance and according to the statement of the plaintiff in error are kept alive and renewed to residents of Pennsylvania by payments from year to year. The fact that the State could not prevent the contracts, so far as that may be true, has little bearing upon its right to consider the benefit thus annually extended into Pennsylvania in measuring the value of the privileges that it does grant. We may add that the State profits the Company equally by protecting the lives insured, wherever the premiums are paid. The tax is a tax upon a privilege actually used."

This case was followed by Compania De Tabacos v. Collector, 275 U. S. 87, where the court sustained a tax upon premiums from fire insurance policies on property within the Philippines, which premiums were received by a foreign insurance company licensed to do business in the islands. The court said: (p. 98).

"Does the fact that while the Tobacco Company and the London Company were within the jurisdiction of the Philippines, they made a contract outside of the Philippines for the insurance of merchandise in the Philippines, prevent the

imposition upon the assured of a tax of one per cent upon the money paid by it as a premium to the London Company? We may properly assume that this tax, placed upon the assured, must ultimately be paid by the insurer, and treating its real incidence as such, the question arises whether making and carrying out the policy does not involve an exercise or use of the right of the London Company to do business in the Philippine Islands under its license, because the policy covers fire risks on property within the Philippine Islands which may require adjustment, and the activities of agents in the Philippine Islands with respect to settlement of losses arising thereunder. This we think must be answered affirmatively under Equitable Life Society v. Pennsylvania, 238 U. S. 143."

See also Palmetto Ins. Co. v. Connecticut, 272 U. S. 295. Compare, Hartford Indemnity Co. v. Delta & Pine Land Co., 292 U. S. 143 where it was held that a statute of limitations of the state where the breach occurred and the suit was brought upon a contract of suretyship, did not supersede the limitations specified in a valid contract of insurance made outside the state covering defalcations anywhere, since the performance in the state of suit involved at most only the casual payment of money and a state may not draw to itself control over contracts validly made elsewhere regardless of the relative importance of the interests of the form with those created at the place of contract. See also Alaska Packers Ass'n. v. Commission, 294 U. S. 532, 547. The test is this, according to Mr. Justice Brandeis dissenting in New York Life Ins. Co. v. Dodge, 246 U. S. 357, 382-3:

"Is the subject-matter within the reasonable scope of regulation? Is the end legitimate? Are the means appropriated to the end sought to be obtained? If so, the act must be sustained, unless the court is satisfied that it is clearly an arbitrary and unnecessary interference with the right of the individual to his personal liberty."

It will have been observed that in the aforegoing cases, it was considered an important circumstance if the insurance company, like the plaintiff companies in the pending case, was doing business under license from the state whose legislation was the subject of attack. This feature was emphasized in Bothwell v. Buckbee, Mears Co., 275 U. S. 274 which concerned a policy of strike insurance covering a

risk in Minnesota and written by an insurance company not licensed to do business therein. The contract required the performance of certain acts, and gave the company the [fol. 54k] right to do other acts within the state, all of which constituted activities of the insurance business which an unlicensed company was forbidden to perform. These circumstances, the court held, justified the refusal of the state to enforce the contract.

In Equitable Life Ins. Society v. Pennsylvania and Compania De Tabacos v. Collector, supra, a tax on premiums was sustained because of activities of the insurer in connection with the contract, performed or contemplated, constituted an exercise of its license to do business in the state. These authorities are pertinent on the question of jurisdiction although some of them relate to taxation with which we are not concerned in the pending case, for taxation is regulation. Compania De Tabacos v. Collector, 275 U. S. 87, 95, and whatever a state in the exercise of its police power may regulate, it may subject to taxation. Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, 425, 426.

As it has been shown in the findings of fact that the contracts of the plaintiff companies on persons or property within Virginia call for or contemplate the performance of certain acts within the state, and it follows that the state has power to regulate them, the question is whether the statutory requirement that the insurance contract be made through a resident agent, who shall be paid at least one-half the commissions, has a reasonable relation to the risk covered by the contract and to the performance within the state of the obligations undertaken by the insurer.

The plaintiffs contend that the sole purpose of the statute is to profit the resident agent, to the detriment of the non-resident broker, the salaried resident agent, the insurance company and the insuring public. That one purpose and effect is to increase the income of the resident agent is undeniable, but we think that that is not the only purpose or probable effect. The important object of the statute is to require that all policies shall be placed by a resident agent, who shall take a real and not merely a nominal share in the placing of the business and in the performance of the contract. Of this main purpose the requirement of countersignature by the resident agent is only a minor and incidental part, of little importance except as indicating that

the resident agent shall become an active factor in the business, especially when coupled with the major requirement that he shall be entitled to the whole commission of which he must retain one-half. The latter requirement, it is reasonable to conclude, will probably lead to greater participation on the part of the resident agent and he will be expected to render to the company and to the assured all the services of which he is capable. The tendency will be to create a more efficient agency force with the result that the local interests of the insured will be better served.

[fol. 541] It is of equal importance that the creation of greater responsibility on the part of the resident agents whom the state can reach and control, will assist the state in putting into effect statutes passed for the regulation of the insurance business. It will not be so easy for the foreign insurance companies, the non-resident brokers and the insured to evade the prohibitions against rate cutting and rebating of commissions, designed to protect the insured resident in Virginia and the local insurance companies against the great advantages of business of national scope. Information as to illegal practices, which the resident agent will acquire, may be made avai-able to the state. The effects of the statute may be less favorable than this prognosis indicates, but it is not an unreasonable one, and in any event, the burden is on those who attack the statute to show that it is devoid of legitimate purpose.

We conclude that Virginia is not without jurisdiction to pass a statute affecting the production of out-of-state contracts issued by companies licensed to do business in the state. Is the method adopted by the statute of 1938 so arbitrary and unreasonable as to be beyond its authority, that is to say, is it a proper exercise of the police power of the state which may be used to promote the public health, morals, safety, convenience and prosperity? Eubank v. Richmond, 226 U. S. 137, 142; Nebbia v. New York, 291 U. S. 502-3; West Coast Hotel Co. v. Parrish, 300 U. S. 379. We think that the Act is within the power of the state. The plaintiffs complain of the exaction of one-half of the commission as the share of the resident agent; but it cannot be denied that such an agent can render services of substantial value. The actual practice in the fire insurance business in Virginia and elsewhere in the United States is of great significance in this respect. For many years it has been cus-

tomary for fire policies to be signed by the resident agent, and he has been paid the full commission if he has negotiated the policy, and one-half commission if he has not negotiated the policy. In view of this experience, how can it be said that the application of a like rule to the casualty and surety business is arbitrary?

The provision for countersignature needs little discussion. Such a requirement is quite common throughout the United States. The present statutory provision that the signature of a commission rather than a salaried agent shall be affixed to the policy is imposed as a safeguard to make certain that the commission agent, whose cooperation in the enforcement of the insurance statutes is desired, shall have knowledge of the issuance of policies and of his right to share in the commissions and in the subsequent activities under the contract. The salaried agent has no real complaint of discrimination against him since it is admitted that his association with business originating outside of the state has been entirely nominal and perfunctory in the past, unaccompanied by any real share in the business, or any compensation for his signature.

We do not overlook the peculiar situation of the non-resident assured who form no part of the Virginia public which the state desires to protect. Undoubtedly their business methods will be disturbed by the enforcement of the statute. It is contended, not without merit, that they have no need for the services of the resident commission agents, and that in fact, the latter cannot assume the function of producing agents in their behalf without harmfully intruding themselves into confidential business affairs. Moreover, it is fair to say that these affairs are so important and so widespread in their scope as to be beyond the technical knowledge and skill of the average Virginia agent, and that the interests of the non-resident assureds can be best looked after by the brokers at the great centers of population where the head offices of the insurance companies and of the assureds are located, and in Virginia by the engineering and claim personnel of the companies. It is also true that the substantial compensation required by the statute to be paid to the Virginia agents will increase the cost of the business.

These circumstances are not without material bearing in considering the reasonableness of the statute; but when they

are weighed against the considerations above outlined, the conclusion still remains that the statutory provisions are not so unreasonable and arbitrary as to render the legislation void. It is for the legislature of the state to determine what economic policy will best serve the interest of its citizens, and to this end it may regulate or even prohibit a particular type of business in order to promote what it deems to be the public welfare. In passing upon the right of the state to impose on chain stores a graduated tax which increased in rate in proportion to the number of stores, the Supreme Court had this to say in Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U. S. 412, 425:

"• • • In the exercise of its police power the state may forbid as inimical to the public welfare, the prosecution of a particular type of business, or regulate a business in [fol. 54m] such manner as to abate evils deemed to arise from its pursuit. Whatever a state may forbid or regulate it may permit upon condition that a fee be paid in return for the privilege, and such a fee may be exacted to discourage the prosecution of a business or to adjust competitive or economic inequalities. Taxation may be made the implement of the exercise of the state's police power; and proper and reasonable discrimination between classes to promote fair competitive conditions and to equalize economic advantages is therefore lawful.

If, in the interest of the people of the state, the legislature deemed it necessary either to mitigate evils of competition as between single stores and chains or to neutralize disadvantages of small chains in their competition with larger ones, or to discourage merchandising within the state by chains grown so large as to become a menace to the general welfare, it was at liberty to regulate the matter directly or to resort to the type of taxation evidenced by the Act of 1934 as a means of regulation. The appellants, by incorporating in some other state, or by spreading their business and activities over other states, cannot set at naught the public policy of Louisiana. The claim is, essentially, that even if local evils flow from the appellant's methods the state cannot control those evils because its power is limited to conditions created by the members of the chain found within the State. The conclusion is that the state must treat these stores as if they were something different from

what they really are, since to do otherwise would be to reach beyond the borders of Louisiana for the measure of the tax. The argument answers itself. The policy Louisiana is free to adopt with respect to the business activities of her own citizens she may apply to the citizens of other states who conduct the same business within her borders, and this irrespective of whether the evils requiring regulation arise solely from operations in Louisiana or are in part the result of extra-state transactions. It is not a denial of due process to adjust such license taxes as are here involved to meet the local evil resulting from business practices and superior economic power even though those advantages and that power are largely due to the fact that the taxpayer does business not only in Louisiana but in other states."

In their original brief the plaintiffs refer to the decision in Hartford Steam Boiler Inspection & Insurance Co. v. Harrison, 301 U. S. 459, where it was held by a divided court upon petition and answer of the parties, and without evidence, that a Georgia statute, relating to insurance companies, was unconstitutional because it discriminated arbitrarily and unreasonably against stock companies by requiring them to write the policies through commission agents, while permitting mutual companies to write policies through salaried agents. But the plaintiff insurance companies in their brief pointed out that no evidence has been offered in the pending case to show that there is such a similarity between the various classes of insurance companies as makes it arbitrary to classify them differently, and hence the plaintiffs place no reliance upon the decision referred to, and make no attack upon the Virginia statute because its provisions apply to stock, casualty, insurance and surety companies, and the salaried agents thereof, but do not apply to life, title, ocean marine or mutual insurance companies or their salaried agents.

The reference to mutual insurance companies in the Virginia Act is found in section 4222-a, where it is provided that no state agent, special agent, company representative, salaried officer, manager or other salaried representative of any legally authorized insurance company, except a mutual insurance company, shall countersign any contract of insurance or surety, covering persons or property within the state, except contracts of life, title and ocean marine insur-

ance; and it may seem that this provision of the statute at least should be declared invalid. But, we are satisfied that the injunction prayed should not on this account be granted. It was stated in paragraphs 9 and 11 of the complaint that the plaintiffs do not claim that any provision of the Virginia Act violates the rights of the company plaintiffs or of the agent plaintiffs, because it denies them the equal protection of the laws, except insofar as the Act is designed to promote the interests of the general body of the Virginia stock, fire, casualty and surety commission agents, with the [fols. 54n-55] view to unjustly enrich them at the expense of the salaried agents, the companies, the insuring public and the Commonwealth of Virginia. No evidence indicating unreasonable or arbitrary discrimination in favor of mutual companies has been submitted. On the other hand, the evidence shows that mutual companies, with immaterial exceptions, do not have commission agents, and the inclusion of such companies within the regulatory provisions of the statute would be meaningless unless they were required to operate on different principles. It is the boast of stock companies that the salaried agent of the mutual company is not able to afford as valuable a service to the insuring public as the commission agent of the stock company, since the latter is less the representative of the company, whose policies he places, than he is the representative of the insured. The plaintiffs "cannot complain if in fact the discrimination embodied in the law is but a perpetuation of a classification created and existing" by their own acts, Borden's Co. v. Ten Eyck, 297 U. S. 251, 263, and in fact they make no complaint in this respect.

Our conclusions of law are that the requirements imposed by the Act of 1938 upon the plaintiffs with regard to contracts of insurance made outside of Virginia are not beyond the jurisdiction of the state; that the provisions of the Act are not arbitrary and unreasonable or in violation of the federal Constitution, and that the prayers for interlocutory and permanent injunctions should be denied and the bill of complaint should be dismissed.

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF PLAINTIFFS FOR NEW TRIAL OF ISSUES RAISED BY APPLICATION FOR INTERLOCUTORY INJUNCTION OR FOR RE-HEARING OF SAID APPLICATION, FOR AMENDMENT OF OPINION FILED SEPTEMBER 6, 1939, AND FINDINGS AND CONCLUSIONS THEREIN, AND FOR ADDITIONAL FINDINGS AND CONCLUSIONS

Filed October 2, 1939

To the Honorable Judges of the Statutory 3-Judge Court:

Plaintiffs move the court for a new trial of the issues raised by the application for an interlocutory injunction or for a re-hearing of said application, for amendment of the opinion filed September 6, 1939, and the findings and conclusions therein, and for the making of additional findings and the statement of additional conclusions.

The grounds of the motion and the relief sought are as set forth hereinafter.

Grounds of Motion for New Trial or for Re-hearing; and Relief Sought

Plaintiffs respectfully submit that the court by its opinion of September 6, 1939, has not conformed to Rule 52 of the Rules of Civil Procedure, has made incorrect findings of fact, stated incorrect conclusions of law, and has failed to make findings of fact and state conclusions of law, which should have been made and stated, all as more particularly set out hereinafter under the heading "Grounds of Motion for Amendment of Opinion and Findings and Conclusions and for Making Additional Findings and Stating Addi-[fol. 57] tional Conclusions; and Relief Sought". The relief sought is to procure the modification of the opinion filed September 6, 1939, in the respects set out under the said subsequent heading.

Grounds of Motion for Amendment of Opinion and Findings and Conclusions and for Making Additional Findings and Stating Additional Conclusions; and Relief Sought

1. In the opinion the court does not find the facts specially and state separately its conclusions of law, nor sim-

ilarly set forth the findings of fact and conclusions of law which constitute the grounds of the refusing of the interlocutory injunction.

NOTE: For convenience of reference to the opinion, a copy of the same is attached hereto as a part hereof, and upon that copy, plaintiffs have numbered the fifty-four paragraphs of the opinion from 1 to 54.

If the substance of the opinion is to remain as at present, to which plaintiffs object and except, plaintiffs pray that the paragraphs containing findings of fact and conclusions of law shall be numbered, and that the opinion shall be rearranged and headings inserted, as follows, viz:

(a) Paragraph 8 to precede paragraph 7 and be preceded by the heading "Special Findings of Facts".

(b) Paragraph 50 to be brought forward in the opinion so as to come under the heading "Special Findings of Facts".

(c) Paragraph 54 to be brought forward in the opinion to follow the matter under the heading "Special Findings of Facts", and to be itself preceded by the heading, "Conclusions of Law".

(d) A heading "Comment" or "Opinion" to follow the matter under the heading "Conclusions of Law", to be followed by such parts of the opinion as do not constitute findings of fact or statements of conclusions of law.

2. Certain paragraphs of the opinion appear to contain not only matter intended to constitute findings of fact, but [fol. 58] also comment or argument. Plaintiffs pray that the matter of the one kind shall be placed under the heading "Special Fndings of Facts", and the matter of the other kind be placed under the heading "Comment" or "Opinion". The paragraphs referred to include: 8, 9, 14, 17, 19, 20, 31, 33, 35, 36, 37, 38, 53.

3. Plaintiffs submit that statements now in the opinion, specified in Schedule A herewith, are inaccurate and for the reasons there stated, plaintiffs pray for their alteration or omission as there shown.

4. Plaintiffs submit that the court should have made findings of fact as indicated in Schedule B herewith, and pray that they shall be made.

5. Plaintiffs submit that conclusions of law now in the opinion, specified in Schedule C herewith, are incorrect and pray for their alteration (and the alteration of parts of the opinion supporting the same) as there shown.

6. Plaintiffs submit that the court should have stated conclusions of law as indicated in Schedule D herewith, and pray that they shall be stated.

Respectfully submitted, (Sgd.) Andrew D. Christian, Charles K. Woltz, 907 East Main Street, Richmond, Virginia; John Lord O'Brian, William I. Morey, 37 Church Street, Buffalo, New York, Attorneys for Plaintiffs. Christian, Barton & Parker, 907 East Main Street, Richmond, Virginia. Slee, O'Brian, Hellings & Ulsh, 37 Church Street, Buffalo, New York. Of Counsel.

[fol. 59] (Copy of Opinion of Court Incorporated Herein as Exhibit—See Page 54-A.)

[fol. 60] SCHEDULE "A" TO MOTION

(Inaccurate Statements in Opinion, Reasons for Modifications, and Modifications Prayed by Plaintiffs)

1. In paragraph 13 of the opinion it is said a producer "of casualty and surety contracts" covering in remote places usually relies exclusively on the company to service the contract, etc.; and that for this reason a producer seldom insures against a "risk" with a company not admitted in the coverage state. In paragraph 20 it is inferred that a Virginia license is important "when a contract for Virginia coverage" is produced; and it is there said that licensing in the state of coverage is an important factor "in the placing of insurance", as in its absence the assured loses the benefit of company services in the coverage localities when he needs them most and cannot sue it there. In paragraph 25, it is said that the ability of the company to perform the services in the state of coverage "necessarily affects the placing of the insurance."

The above statements are not accurate, when made with reference to numerous types of contract to which the chal-

lenged statute applies, e.g., fidelity, plate glass, burglary, health and accident, numerous surety obligations, and excess insurance. They should be limited to types of contract to which they are properly applicable, e. g., workmen's compensation, automobile, boiler, machinery, public liability, certain surety obligations. This can be conveniently accomplished by limiting each above-quoted expression by the phrase "of a type requiring servicing in coverage localities". And the types of contracts which require, and those which do not require, servicing in coverage localities should be stated.

2. In paragraph 16 it is said that the general agent "or branch manager" under whose supervision or "within whose territory" a producer is working receives the field supervision cost; and that "nearly all casualty and surety companies" belong to the Acquisition Cost Conference.

As the branch manager never receives any commission, the reference to him should be deleted, adding, if desired, [fol. 61] at the end of the sentence", or, if the producer is working under the supervision of a branch manager, it is available to the company for the payment of the expense of the branch office". The reference to "casualty and surety companies" should be to "all stock casualty and surety companies licensed in New York".

3. The first sentence of paragraph 24 reads as follows: "The controlling reason, however, for the out-of-state production of hotchpotch or master policies covering persons or property in Virginia is the lower rate obtained for Virginia risks."

This sentence is inaccurate, first, because there is no evidence that any single reason usually controls the selection of the producer and the resulting state of production; next, because Virginia producers can and do sell hotchpotch or master policies covering persons or property in Virginia (and/or in other states); and obtain for the Virginia risks (and/or those of other states) as low rates as out-of-state producers may obtain; and lastly, because the assured is not concerned with the rate for any single state as Virginia, but only the aggregate cost. The sentence should be revised to read: "An important reason, however, for the use of a hotchpotch or master policy covering persons or property in Virginia, and/or other states, or covering exposures in

different parts of Virginia and/or other states, is the lower rate obtained for the entire coverage."

It is also said near the end of paragraph 24 that when brokers are invited to make competitive bids, the broker who offers the best price usually gets the business "and he frequently contributes to this result by reducing the customary commission". This is not accurate, since the evidence shows such reductions only in cases where the risk is "equity" rated and only when the company has imposed upon the broker, as a part of the rating process, the reduction of commission. (PRB 52-54, 60). The quoted language should read "and if a risk is equity rated by the company, it may, and frequently will, require that the broker contribute to the result by reducing his commission."

4. Paragraph 28 discusses the competitive disadvantages of "Virginia casualty and surety companies, not doing busi- [fol. 62] ness on a national scale". It should be omitted, because there is no evidence of the existence of any such companies; nor will the challe-ged statute enable such to do business on "a national scale".

5. The first sentence of paragraph 30 is: "Out-of-state production of insurance contracts makes more difficult the enforcement of the insurance laws of the state." The first sentence of paragraph 31 is "The out-of-state production of Virginia coverage makes it more difficult to enforce certain of these laws, particularly those dealing with insurance rates". The last sentence of paragraph 31 is: "In the absence of someone within her jurisdiction connected with the production process it is difficult for Virginia to prevent violations of these statutes."

There is no evidence to support these statements. A contract may as readily be produced within Virginia as without Virginia, covering risks in Virginia and West Virginia, and in which an arbitrary price is fixed for the West Virginia coverage, or retrospective rating of the West Virginia risks is provided for, effecting savings to the assured, and in connection with which any granted "rebate" is attributable to the West Virginia risks, when but for the "rebate or favor" the contract would not have been purchased. Whether it is produced within or without Virginia, she may with equal ease prevent any violation of her statutes, because she has the company within her borders, ex-

amines it periodically, and may subject it to fines and penalties, as well as revocation of its license, should it violate her laws. In truth she doesn't concern herself at all with rates charged for coverage in other states, as shown by her practice at this very time, and since the effective date of the challenged statute, as mentioned in the next paragraph hereof. And neither does she regulate at all the rates for the coverage of many casualty lines to which the challenged statute applies. The subjects of these sentences should not be "Out-of-state productions" and "In the absence of someone within her jurisdiction connected with the production process", but should be "The coverage under one contract of exposures within and without Virginia", and "In cases where a contract covers exposures within and without Virginia":

[fol. 63] 6. In paragraph 32 an inaccurate finding is made as to a 1921 ruling of the Insurance Commissioner that insurance on persons or property in Virginia shall be issued under a policy separate from insurance on persons or property in any other state. This finding should have stated that the 1921 ruling has since been modified by rulings of defendants still in effect (PRB47-48), permitting workmen's compensation risks within and without the state to be insured by one policy, if there be a separate schedule or declaration for the Virginia coverage written in compliance with the Virginia resident agency laws, and permitting a fire policy to cover values both within and without Virginia if the premium on the underlying policies on the Virginia values shall be at the legal rate, and requiring only that underlying policy to be filed with the rating bureau.

7. In paragraph 33 it is said that before the effective date of the challenged statute contracts covering in Virginia and produced outside of Virginia have been countersigned in Virginia by the general agents and branch office managers without compensation". In the first sentence of paragraph 36, it is said the branch manager's countersignature has been unaccompanied "by any compensation to the signer". (In the last sentence of paragraph 49, the statement is repeated.)

The statement as to general agents is inaccurate because they have always received compensation of the small amount deemed appropriate for the service; it is incorrect as to branch managers because the countersigning is a part of

the duty, for the performance of which they receive their salaries.

The statement as to general agents should recognize that they have been especially compensated though by small sums; and as to branch managers should not be made, or if made in any form, should state that they countersign as a part of their duty for the performance of which they receive their salaries, and without special compensation for each act of countersignature.

8. In paragraph 34 it is said that the challenged statute "will not affect the production of insurance contracts covering a single or a small number of risks, since these are placed almost entirely through resident agents". This is [fol. 64] inaccurate, and should be deleted because the statute forbids all contracts wherever produced to be countersigned by salaried agents, and it is frequently important to the interests of assureds, companies, and Virginia producers, (PB159-160) for the salaried agents to countersign contracts produced within Virginia by a resident agent who is not able to furnish a needed countersignature at the necessary time and place.

9. In paragraph 48 in speaking of the custom in the fire business, it is said that the resident agent, not negotiating the policy, has received "one-half of the commission". Upon the evidence, as correctly indicated in paragraph 38, he has received as commission "one-fourth to one-half of the commission", and the statement in paragraph 48 should be changed accordingly.

[fol. 65] SCHEDULE "B" TO MOTION

(Additional Fact Findings Prayed by Plaintiffs)

1. Numerous ones among the company plaintiffs, including those represented by the agent plaintiffs, have large, valuable and expensive field forces and plants in Virginia which cannot be removed therefrom without destruction, and have had such plants for some years prior to the enactment of the challenged statute. (Stip. par. 11, p. 12.)

2. The Virginia Association of Insurance Agents, Inc., caused the 1938 statute to be drawn and introduced in the

Legislature and successfully urged its enactment in order to stop a prior existing practice of salaried resident agents countersigning contracts covering in Virginia and produced outside of Virginia by non-resident agents and brokers, and as they claimed, "save for Virginia local agents, commissions justly theirs". It was represented by the members of the Association to members of the Legislature that the statute would not affect insurance costs but would bring annually to Virginia agents many thousands of dollars which otherwise would remain with such non-resident producers. The defendants accepted the views of the members of the Association and supported the bill, to "get them what they wanted". It is generally considered that the only purpose of such statutes is to procure the payment of commissions to agents in states of coverage, which otherwise would not be paid to them. (PB13-19.)

3. A casualty or surety agent is usually an agent for only one company, unlike a fire agent who is usually an agent for many companies. A casualty or surety agent is ordinarily not granted by his company the exclusive right to be its agent in a given territory, as a fire agent is. If a fire contract be produced within Virginia covering at a single location therein removed from the place of production, the fire company makes a commission payment to an agent in the locality of coverage; if there are several coverage localities, [fol. 66] such a payment will be made to an agent in each locality, whether in the same or in different states. Fire agents in many localities are organized into local bodies called "boards", the rules of which forbid their members to act for companies failing to recognize what are considered the territorial rights of the members to receive commissions on business covering in the territory though not produced therein. Whatever may be the locations of casualty or surety coverage and its producer, neither the producer nor the company ever requires assistance from an agent or broker other than the producer in the writing of the contract, though in the fire business it frequently occurs that such assistance is required and is furnished. (PB20-22.)

4. After the making of a casualty or surety contract, and throughout its term, its producer is the sole medium for dealings between the company and the assured as to matters relating to the nature and scope of its coverage. (PB53-54, 104-105, 106-109.)

5. The amount of the commission of a producer is determined by the percentage of a premium allowed therefor in the construction of the rate of premium; it is usually retained by the producer for his own purposes though in rare instances these may include the use of a part of it as determined by him to procure assistance from agents or brokers in distant coverage localities in the rendering of services to an assured; in such cases he selects his assistants, designating the services to be performed and the manner of performing them. (PB89-92, 74, 108, 110-111; PRB22-23.) The producer usually controls the selection of the company with which the assured is to contract (PB54; S14; D1793); and may readily place it in one not affected by the challenged statute, e. g., a mutual company. (PB34-35; D100, 1794.)

6. The field supervision factor is the only factor in a casualty or surety premium from which money can properly come to maintain field supervision. Field supervision is an integral part of the business. The essential purpose for which this factor is designed and allowed in a premium is [fol. 67] defeated if it should be diverted to the purpose of paying to a Virginia countersigner the whole or part of the commission required by the challenged statute to be paid to him. To so divert it would not relieve the company of the expense of field supervision in which the countersigning agent can take no effective part. (PB95-97.)

7. A contract produced outside of Virginia and insuring persons or property therein, will frequently cover in various parts in Virginia. It usually covers all exposures of the assured of a particular kind, with a schedule stating separately the various states of coverage and locating the various parts of the risk. (PB28-29.) According to the interpretation by defendants of Section 4222, it is permissible for a company to make outside of Virginia a contract covering in Virginia and other states, if the Virginia coverage is evidenced by a separate underlying Virginia policy, schedule, or declaration, countersigned as required by that section. (D1125, 1148; PB29; PRB47-48; PB78.)

8. As the challenged statute is construed and enforced by the defendants, contracts are made "through regularly constituted and registered agents or agencies" of the companies, as required by Section 4222 thereof, when such contracts are countersigned by resident agents as required by

said section, even though they do not negotiate the contracts or deliver same, or collect the premiums. (Answer 16-a.)

9. On August 20, 1938, the defendant Bowles ruled that an agent may "delegate the privilege of countersignature to an office employee by power of attorney". This ruling did not restrict the delegation to an employee qualified to supervise the contents or form of the contract. (PB82.)

10. Under all forms of contracts, inspection, engineering, and safety work is optional with the company, as under many forms, claim service is. (Exs. 4-7, C, D.) The terms of contracts are so short and losses so infrequent, that as to many contracts there may fairly be said to be a heavy balance of probability that there will be no act performed by the company anywhere as a consequence of having made a given contract. (Exs. 39, 40; PB31, 105-106.)

[fol. 68] 11. Due to the frequency with which each agent plaintiff has furnished countersignatures, the aggregate value of the countersignature services of each agent plaintiff has been very great, though the value of furnishing a single countersignature was trivial (Complaint 7-a, not denied in answer). The prohibition against a salaried agent countersigning materially decreases the value of his services to his company. (PB89) It is frequently important to the interests of assureds, companies, and Virginia producers for the salaried agents to countersign contracts produced within Virginia by a resident agent who is not able to furnish a needed countersignature at the necessary time and place.

12. The statutes of Virginia have provided to the defendants as the administrators of her insurance laws full power to apprise themselves by convenient and effective methods of the legality or illegality of all actions and transactions of insurance companies doing business therein, which she has thought proper to regulate. Pursuant to such statutes the expenses of the supervising processes are borne by the companies. There are periodic examinations of the companies. (PRB57-58, 79; D1128-1131)

13. Some non-resident producers of contracts covering in Virginia do not procure licenses as non-resident brokers from Virginia, and the company plaintiffs frequently are not able to require them to do so. Many of those who do so are persons who do not come into Virginia to solicit or do

other acts, but have procured licenses solely in order to qualify themselves as persons at whose requests Virginia countersignatures may be furnished and to whom Virginia countersigners may pay or allow parts of commissions. (Stip. par. 12)

[fol. 69] SCHEDULE "C" TO MOTION

(Conclusions of Law which are Incorrect and the Alterations Prayed therein)

1. The conclusion that "the requirements imposed by the Act of 1938 upon the plaintiffs with regard to contracts of insurance made outside of Virginia are not beyond the jurisdiction of the state;" should be altered to express the contrary conclusion.

2. The conclusion that "the provisions of the Act are not arbitrary and unreasonable or in violation of the Federal Constitution" is incorrect and should be altered to express the contrary conclusion.

3. The conclusion that "the prayer for interlocutory and permanent injunctions should be denied and the bill of complaint should be dismissed" is incorrect and should be altered to express the conclusion that the prayer for interlocutory injunction should be granted.

Note: The statements in paragraphs 45-49, and 51, which support the conclusions herein submitted to be incorrect, should be altered so far as necessary to be consistent with the contrary conclusions.

[fol. 70] SCHEDULE "D" TO MOTION

(Additional Conclusions of Law Submitted to be Proper and Prayed by Plaintiffs to be Made)

1. The provision of the statute which forbids salaried agents to countersign contracts covering in Virginia and disqualifies them from furnishing countersignatures required by the statute, when considered in the light of its application to contracts produced within the State of Virginia, violates the rights of the agent plaintiffs because it deprives them of their liberty and property without due

process of law, and denies them the equal protection of the laws, and violates the rights of the company plaintiffs because it deprives them of their property without due process of law.

2. The provision of the statute which forbids countersigners of contracts produced outside of Virginia to allow or pay to non-resident brokers or agents not licensed by Virginia who shall have produced said contracts, any portion of any commission, and prevents the company plaintiffs from procuring said allowances or payments by Virginia countersigners of said contracts to said non-resident brokers and agents, violates the rights of the agent plaintiffs for the reasons stated in paragraph 1, supra, and violates the rights of the company plaintiffs for the reasons there stated.

[fol. 71] NOTICE

To the Honorable Abram P. Staples, Attorney General of Virginia, and as such, Attorney for the Defendants, State Library Building, Richmond, Virginia:

Please take notice, that the undersigned will bring the foregoing motion on for hearing before the court at the Court-room of the District Court of the United States for the Eastern District of Virginia, in the United States Post Office Building, City of Richmond, State of Virginia, on the 12th day of October, 1939, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

(Sgd.) Andrew D. Christian, Attorney for Plaintiffs.

Due service of the above-mentioned motion is acknowledged this 2nd day of October, 1939.

(Sgd.) Abram P. Staples, Attorney General of Virginia, and, as such, Attorney for Defendants.

[fol. 72] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION OF PLAINTIFFS FOR INJUNCTION PENDING APPEAL—Filed October 2, 1939

To the Honorable Judges of the Statutory 3-Judge Court:

Plaintiffs move the court that if the court shall enter an order or judgment denying an injunction as prayed for by

the complaint herein, the court shall grant said injunction during the pendency of an appeal from said order or judgment. The grounds for this motion are that plaintiffs intend to prosecute promptly and with due diligence, an appeal to the Supreme Court from any such order or judgment; that in the absence of an injunction pending appeal, plaintiffs will suffer substantial, immediate, continuous, and irreparable damage from the necessity for compliance with the challenged statute; that not only will business practices of plaintiffs be required to be substantially changed, in the absence of said injunction, in material ways, but the same is so of the practices of all stock casualty and surety companies, brokers, and agents concerned with contracts produced outside of Virginia and covering therein, and of the assureds under said contracts. And the doubtful questions involved in the action at bar exist also in states other than Virginia, with similar statutes to the Virginia one, in none of which are statutes similar to the Virginia statute being enforced, pending a contemplated decision by the Supreme Court in the action at bar; so that if the Virginia statute [fol. 73] should be enforced pending appeal, attempts to enforce such similar statutes in other states would likely ensue with consequent multiplicity of expensive and tedious litigation, and expensive and confusing alteration of such practices of interested parties in those states. All of which may be prevented, as is believed by plaintiffs, by the granting of the injunction in the action at bar pending appeal.

Respectfully submitted, (sgd.) Andrew D. Christian, Charles K. Woltz, 907 East Main Street, Richmond, Virginia. John Lord O'Brian, William I. Morey, 37 Church Street, Buffalo, New York, Attorneys for Plaintiffs.

Christian, Barton & Parker, 907 East Main Street, Richmond, Virginia. Slee, O'Brian, Hellings & Ulsh, 37 Church Street, Buffalo, New York, of Counsel.

[fol. 74] NOTICE

To the Honorable Abram P. Staples, Attorney General of Virginia, and, as Such, Attorney for the Defendants, State Library Building, Richmond, Virginia:

Please take notice, that the undersigned will bring the above motion on for hearing before the court at the Court-

room of the District Court of the United States for the Eastern District of Virginia, in the United States Post Office Building, City of Richmond, State of Virginia, on the 12th day of October, 1939, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

(Sgd.) Andrew D. Christian, Attorney for Plaintiffs.

Due service of the above-mentioned motion is acknowledged this 2nd day of October, 1939.

(Sgd.) Abram P. Staples, Attorney General of Virginia, and, as such, Attorney for Defendants.

[fol. 75] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION FOR RE-HEARING—Entered and Filed October 6, 1939

The motion of the plaintiffs for a new trial of the issues raised by the application for an interlocutory injunction, or for a rehearing of said application, for amendment of the opinion filed herein on September 6, 1939, and the findings and conclusions therein, and for the making of additional findings and the statement of additional conclusions, having been read and considered, it is ordered by the District Court of the United States for the Eastern District of Virginia this 6th day of October, 1939:

That said motion be and the same is hereby denied.

(Signed) Morris A. Soper, United States Circuit Judge; Luther B. Way, United States District Judge; Robert N. Pollard, United States District Judge.

[fol. 76] IN UNITED STATES DISTRICT COURT

Civil Action No. 8

WILLIAM H. OSBORN, et als., Plaintiffs,

v.

THOS. W. OZLIN, et als., etc., et al., etc., Defendants

ORDER DISMISSING BILL—Entered and Filed October 6, 1939

It is ordered, adjudged and decreed this 6th day of October, 1939, by the District Court of the United States for the

Eastern District of Virginia, upon the findings of fact and conclusions of law set out in the opinion heretofore filed:

That the bill of complaint be dismissed.

(Signed) Morris A. Soper, United States Circuit Judge; Luther B. Way, United States District Judge; Robert N. Pollard, United States District Judge.

[fol. 77] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING INJUNCTION PENDING APPEAL—Entered and Filed October 11, 1939

It is adjudged, ordered, and decreed this 11th day of October, 1939, that the defendants be and hereby are enjoined from in any manner enforcing against the plaintiffs the provisions of Chapter 218 of the Acts of 1938 of the General Assembly of Virginia, until November 6, 1939, and that if by November 6, 1939, an appeal shall have been allowed from the judgment entered on October 6, 1939, then said injunction shall continue in effect during the pendency of the appeal.

(Signed) Morris A. Soper, United States Circuit Judge; Luther B. Way, United States District Judge; Robert N. Pollard, United States District Judge.

I have seen this.

(Sgd.) Abram P. Staples, Attorney General of Va.

[fol. 78] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed November 3, 1939

To Thos. W. Ozlin, William Meade Fletcher and Lester Hooker, individually, and as the persons constituting the State Corporation Commission of the State of Virginia, and George A. Bowles, individually, and as Commissioner of Insurance of the State of Virginia, Defendants:

You and each of you are hereby notified that the plaintiffs in the above-entitled cause will jointly appeal from the

decree of the United States District Court for the Eastern District of Virginia, entered in said cause the 6th day of October, 1939, to the Supreme Court of the United States as provided by the applicable statutes of the United States and rules of said Supreme Court.

Dated November 3, 1939.

John Lord O'Brian, 37 Church Street, Buffalo, New York; (Sgd.) Andrew D. Christian, 907 East Main Street, Richmond, Virginia, Attorneys for Plaintiffs.

Due service of the foregoing Notice of Appeal is hereby admitted this 3rd day of November, 1939.

(Sgd.) Abram P. Staples, Attorney General of Virginia, and, as such, Attorney for Defendants.

[fol. 79] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed November 3, 1939

To the Honorable Robert N. Pollard, Judge of the District Court of the United States for the Eastern District of Virginia:

Now come the petitioners, William H. Osborn, Channing F. MacNeil, Lewis C. Adair, Accident and Casualty Company of Winterthur Switzerland, American Automobile Insurance Company, Bankers Indemnity Insurance Company, Car and General Insurance Corporation Limited, Central Surety and Insurance Corporation, Continental Casualty Company, Eagle Indemnity Company, Fireman's Fund Indemnity Company, General Accident Fire and Life Assurance Corporation Limited, Glens Falls Indemnity Company, Hartford Accident and Indemnity Company, Indemnity Insurance Company of North America, London & Lancashire Indemnity Company of America, London Guarantee and Accident Company Limited, Maryland Casualty Company, Massachusetts Bonding and Insurance Company, National Casualty Company, New Amsterdam Casualty Company, New York Casualty Company, Phoenix Indemnity Company, Royal Indemnity Company, Seaboard Surety Company, Standard Surety & Casualty Company of New York,

Sun Indemnity Company of New York, The Aetna Casualty and Surety Company, The Century Indemnity Company, The Fidelity and Casualty Company of New York, The Hartford Steam Boiler Inspection and Insurance Company, The Standard Accident Insurance Company, The Travelers Indemnity Company, The Travelers Insurance Company, United States Casualty Company, United States Guarantee Company, Zurich General Accident and Liability Insurance Company Limited, and respectfully represent that a final decree of the District Court of the United States for the Eastern District of Virginia, (a Specially Constituted District Court organized pursuant to 28 U. S. C. 380), was [fols. 80-100] entered in the above entitled cause on the 6th day of October, 1939, dismissing their Complaint "upon the findings of fact and conclusions of law set out in the opinion heretofore filed".

Petitioners appeal from said decree, upon the grounds and for the reasons stated in the Assignment of Errors presented herewith.

Wherefore, the petitioners, being so aggrieved, respectfully pray that this appeal be allowed; that a proper order touching the security required of them be made; that citation be issued according to law and that a transcript duly certified of the record and proceedings upon which said decree was based be sent by the Clerk of the District Court to the Supreme Court of the United States under the rules of the Supreme Court in such case provided.

(Sgd.) John Lord O'Brian, 37 Church Street, Buffalo, New York; Andrew D. Christian, 907 East Main Street, Richmond, Virginia, Attorneys for Plaintiffs.

Dated November 3, 1939.

[fol. 101] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed November 3, 1939

Now come the plaintiffs and assign as errors in the record and proceedings, and in the findings of fact and conclusions of law made herein, and in the final decree entered thereon October 6, 1939 by the District Court of the United States for the Eastern District of Virginia dismissing the complaint, the following, viz:

I

Complainants assign error to rulings made by the District Court in the conduct of the trial upon evidence and allege that the court erred:

1. In admitting, over plaintiffs' objection, evidence respecting the custom in the fire insurance business of a producing agent splitting the commission with the agent in the locality of the risk, which was offered as bearing on the reasonableness of the statute involved,—upon the ground said custom was immaterial.

2. In admitting in evidence, over plaintiffs' objection, as bearing on the construction and reasonableness of the statute involved, the Resolution adopted February 13, 1939, by the Board of Directors of the Virginia Association of Insurance Agents, Inc., declaring that a resident agent who countersigns a policy produced by a non-resident broker shall consider himself associated with the contract and determine the propriety thereof and throughout the contract shall render the same service to the assured as if he had been the producing agent,—upon the grounds said Resolution was irrelevant, immaterial and incompetent and was a self-serving declaration.

[fol. 102] 3. In admitting, over plaintiffs' objection, the testimony of T. T. Moore, Chief Examiner of the Virginia Insurance Bureau, respecting the defendants' construction and interpretation of the statute involved as imposing upon a resident agent countersigning a contract produced by a non-resident broker the same obligations with respect to supervising the contract and with respect to future services to be rendered the assured and the insurer as such resident agent has in cases where he produces a similar contract, which testimony was offered as bearing on the construction and reasonableness of the statute,—upon the grounds that such testimony was immaterial, self-serving, and not an officially and regularly promulgated ruling of the Virginia Insurance Bureau.

II

Plaintiffs assign error to the findings of fact made by the District Court, grouping said findings for the sake of brevity in one assignment whenever said findings contain a common error; but intending that the assignment of error shall be

considered as applying to each finding of fact separately, and plaintiffs allege that the court erred:

4. In making the finding of fact in paragraph designated 5 (see Footnote),—that in fire insurance it has been the custom for the producer of the business to associate with the contract and to split the commission with an agent who does business in the vicinity of the risk,—in that said finding is not supported by substantial evidence and is contrary to the clear weight of the evidence.

5. In making the findings of fact in paragraphs designated 5, 6, 12 and 17,—that one of the important services rendered an assured is "servicing the contract" by company "servicing personnel" in the state of exposure and [fol. 103] that the ability of the company to do so affects the placing of the insurance because a producer seldom places the insurance with a company not licensed in the state of exposure,—in that said findings in respect to fidelity, health and accident, excess insurance, and numerous surety, burglary, and plate glass contracts, are not supported by any evidence and are contrary to the uncontroverted evidence, error being assigned separately to the making of each of said findings.

6. In making the finding of fact in paragraph designated 8,—that when a broker, solicitor, or other commission agent is the producer, the branch manager under whose supervision, or within whose territory, the producer is working receives the field supervision cost,—in that said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

7. In making the finding of fact in paragraph designated 12,—that it is as important that the insurer be licensed to do business in Virginia when a contract for Virginia coverage is produced in another state, as when it is produced by a resident agent,—in that said finding is not supported by substantial evidence.

Footnote: For convenience in reference to findings of fact and conclusions of law, the paragraphs of the opinion containing findings of fact and conclusions of law have been marked (1), (2), etc., upon the margin of the court's opinion appended to the Statement as to Jurisdiction.

8. In making the finding of fact in paragraph designated 12,—that the assured most needs the benefit of company services in the state of exposure,—in that said finding is not supported by substantial evidence.

9. In making the finding of fact in paragraph designated 16,—that the controlling reason for out of state production of master policies covering, among others, risks in Virginia, is that a lower rate is obtained for Virginia risks and that such lower rate for Virginia risks is accomplished by the contracts being produced outside of Virginia and by some form of special rating,—in that said finding is not supported by any evidence.

10. In making the finding of fact in paragraph designated 16,—that the broker or producer frequently contributes to the reduction of the premium on a master policy by reducing the customary commission,—in that the only evidence [fol. 104] of such reductions is in connection with risks which are "equity" rated and the company has imposed upon the broker or producer, as a part of the rating process, a reduction of commission, and in that respect said finding is not supported by any evidence.

11. In making the finding of fact in paragraph designated 19,—that Virginia agents do not have the opportunity to acquire the information and experience that will render them expert in the rating and underwriting of multiple risks and that a statutory requirement compelling the association of a resident agent with all Virginia risks will tend to overcome the handicap of the Virginia agent,—in that said finding is not supported by substantial evidence.

12. In making the finding of fact in paragraph designated 20,—that under present out of state production technique small Virginia companies cannot offer reduced premiums on interstate contracts with Virginia coverage included,—in that said finding is not supported by substantial evidence.

13. In making the findings of fact in paragraphs designated 22 and 23,—that out-of-state production of insurance contracts makes more difficult the enforcement of the insurance laws of Virginia, particularly those dealing with insurance rates, rebates and special favors, and virtually nullifies Virginia's statutes dealing with such matters, and that

in the absence of someone in Virginia connected with the production process, it is difficult for Virginia to prevent violations of such statutes,—in that said findings are not supported by substantial evidence, error being assigned separately to each of said findings.

14. In making the finding of fact in paragraph designated 24 respecting the experience of Virginia under prior statutes that in 1921 the State Insurance Commissioner interpreted the prior statutes as requiring all insurance on persons or property in Virginia to be covered by a separate policy from risks located in any other state, and as requiring the policy to be issued through and signed by a resident agent, in that said interpretation was modified before the effective date of the statute here involved by rulings, still [fol. 105] in effect, which permit the issue of one policy covering workmen's compensation or fire risks located both within and without the state subject to certain requirements in said rulings provided, and in that respect said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

15. In making the findings of fact in paragraphs designated 25, 28, and 35,—that, prior to the enactment of the statute involved, general agents, branch office managers and salaried agents have countersigned without compensation contracts produced outside Virginia and covering risks therein,—in that said findings are not supported by any evidence, error being assigned separately to each of said findings.

16. In making the finding of fact in paragraph designated 26,—that the statute involved will not affect the production of insurance contracts covering a single or small number of risks,—in that resident agents producing contracts in Virginia have frequently, when it has been important to the interest of the assured, the company, or the producer so to do, secured the countersignature of such contracts by salaried agents who are now forbidden to do so by the statute, and in that respect said finding is not supported by substantial evidence and is contrary to the clear weight of the evidence.

17. In making the finding of fact in paragraph designated 26,—

"The Act • • • will substantially affect the production of hotchpotch or master policies outside the state, since in every case at least 50% of the acquisition cost thereof must be paid to a Virginia agent. Thereby the cost of the insurance on Virginia risks will be increased; for if the assured buys directly from a Virginia agent, he will lose the great advantage inherent in the concentration of his buying power; and if he buys from a non-resident broker, he must pay a commission both to the broker and the resident agent."

In that (a) if the assured buys from a non-resident broker who places the insurance with a mutual company or with a stock company not licensed to do business in Virginia, the production of master policies outside the state will not be affected, nor will the assured pay a commission both to the broker and the resident agent, nor will he lose the advantage [fol. 106] of his buying power; and (b) if the assured buys such a policy in any company from a Virginia agent, the assured will not lose the advantage of his buying power nor will the cost of the insurance on his Virginia risks be increased; and in these respects said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

18. In making the finding of fact in paragraph designated 28,—that under the statute the countersignature by a resident agent of a policy produced outside the state will not be a perfunctory act unaccompanied by any service to the assured,—in that said finding is not supported by substantial evidence.

19. In making the findings of fact in paragraphs designated 29 and 34,—that if the Virginia agent is paid one-half the commission on a master contract covering risks in several states, he will doubtless be called upon and able to render service of substantial value and be able to render assistance in checking the coverage and premium, servicing the contract, adjusting claims, and acting as the mediator between the assured and insurer in the coverage locality,—in that said findings are not supported by substantial evidence and are contrary to the clear weight of the evidence, error being assigned separately to the making of each of said findings.

20. In making the finding of fact in paragraph designated 31,—that the contracts of the plaintiff companies on persons or property within Virginia call for or contemplate the performance of certain acts within the state,—in that said finding is not supported by substantial evidence.

21. In making the finding of fact in paragraph designated 32,—that it is not the only purpose or probable effect of the statute to increase the income of the resident agents but that the important object of the statute is to require that all policies shall be placed by a resident agent who shall take a real and not merely a nominal share in the placing of the business and in the performance of the contract and that the requirement that he must retain one-half of the commission will probably lead to greater participation of the resident [fol. 107] agent and tend to create a more efficient agency force with the result that the local interests of the insured will be better served,—in that said finding is not supported by substantial evidence.

22. In making the findings of fact in paragraphs designated 33 and 35,—that the statute will crease greater responsibility on the part of the resident agents whose cooperation in the enforcement of the insurance statutes is desired and will assist the state in putting into effect statutes passed for the regulation of the insurance business, and that it will not be so easy for the foreign insurance companies, the nonresident brokers, and the assureds to evade the prohibitions against rate cutting and rebating,—in that said findings are not supported by substantial evidence, error being assigned separately to each of said findings.

23. In making the finding of fact in paragraph designated 33,—in substance to the effect that the prohibitions against rate cutting and rebating of commissions were designed to protect the insured resident in Virginia and the local insurance companies against the great advantages enjoyed by business of national scope,—in that said finding is not supported by substantial evidence.

24. In making the finding of fact in paragraph designated 33,—that the statute will cause the resident agent to acquire information as to illegal practices which may be made available to the state,—in that a licensed resident salaried agent countersigning master policies produced outside the state

would, in the absence of the statute, acquire all information that a resident agent will acquire under the statute and the same information is now made available by such a licensed salaried agent as will be made available under the statute by the resident agent, and neither of them with or without the statute will acquire information except as to the Virginia risks covered by a master contract, and in those respects the finding is not supported by any evidence.

25. In making the finding of fact in paragraph designated 34,—that it has been customary for fire policies to be signed [fol. 108] by a resident agent, and that he has been paid one-half the commission even though he has not negotiated the policy,—in that said finding is not supported by substantial evidence and is contrary to the clear weight of the evidence.

26. In making the finding of fact in paragraph designated 35,—that the statutory provision requiring the signature of a commission agent, rather than a salaried agent, to be affixed to the policy, is imposed as a safeguard to make certain that the commission agent shall have knowledge of the issuance of the policies, and of his right to share in the subsequent activities thereunder,—in that said finding is not supported by substantial evidence.

27. In making the finding of fact in paragraph designated 35,—that the salaried agent has no real complaint that the statute discriminates against him,—in that said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

28. In making the finding of fact in paragraph designated 38,—that the evidence shows that mutual companies, with immaterial exceptions, do not have commission agents,—in that said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

29. In making the finding of fact in paragraph designated 38,—that it is the boast of stock companies that the salaried agent of the mutual company is not able to afford as valuable a service to the insuring public as the commission agent of the stock company,—in that said finding is not supported by any evidence and is contrary to the uncontroverted evidence.

III.

Plaintiffs assign error in so far as the District Court, by its order made and filed October 6, 1939, denied plaintiffs' motion for the additional findings of fact set forth in Schedule B of plaintiffs' motion for a new trial of the issues raised [fol. 109] by the application for an interlocutory injunction or for rehearing of said application, for the amendment of the opinion filed September 6, 1939, and findings and conclusions therein, and for additional findings and conclusions, and plaintiffs allege that the court erred:

30. In refusing to make plaintiffs' requested additional findings of fact numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in such Schedule B, all of which were stipulated to be facts, or alleged in the complaint and not denied in the answer, or alleged in the answer, or proven by uncontroverted evidence, error being assigned separately to the refusal to make each of said requested findings.

IV.

Plaintiffs assign error to the conclusions of law made by the District Court, grouping said conclusions for the sake of brevity in one assignment whenever said conclusions contain a common error; but intending that the assignment shall be considered as applying to each conclusion of law separately, and plaintiffs allege that the court erred:

31. In making its conclusions of law in paragraphs designated 31 and 39,—that Virginia has power to regulate contracts produced outside Virginia covering persons or property within Virginia and that such contracts are not beyond the jurisdiction of the State,—in that said conclusions are contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States, error being assigned separately to each of said conclusions.

32. In making its conclusion of law in paragraph designated 31,—that the question is whether the statutory requirement that the insurance contract be made through a resident agent, who shall be paid at least one-half the commissions, has a reasonable relation to the risk covered by the contract and to the performance within Virginia of the obligations undertaken by the insurer,—in that such conclusion is an erroneous statement of law.

[fol. 110] 33. In making its conclusion of law in paragraph designated 33,—that the burden is on plaintiffs to show that the statute is "devoid of legitimate purpose",—in that such conclusion is an erroneous statement of law.

34. In making its conclusions of law in paragraphs designated 34 and 39, to the effect that the provisions of the statute are not arbitrary and unreasonable, in that said provisions are discriminatory and an unreasonable exercise of the police and legislative powers of Virginia, and without due process of law deprive the assured, the insurer, the resident salaried agent and the non-resident broker of their liberty and property and freedom of contract, and deny them the equal protection of the laws by disqualifying the resident salaried agent as a countersigner and by requiring payment to a Virginia resident agent of an arbitrary commission which bears no relation to the value of his services to the assured, the insurer or the non-resident broker, all in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, error being assigned separately to each of said conclusions.

35. In making its conclusion of law in paragraph designated 34,—that the statute is not arbitrary and unreasonable because it is customary in the fire insurance business for a resident agent to countersign a policy produced by a non-resident broker and be paid one-half the commission,—in that the evidence shows that the business practices and customs and rights, duties and obligations of agents in the fire insurance business differ materially in many respects from those in the field of casualty and surety business.

36. In making its conclusion of law in paragraph designated 39,—that the provisions of the statute involved are not in violation of the Federal Constitution and that the prayers for interlocutory and permanent injunctions should be denied and the complaint dismissed,—in that under the facts established by the evidence, subsection (a) of Section 4222 and Section 4226-a of Chapter 218 of the Acts of the General Assembly of Virginia of 1938 are in violation of [fol. 111] Section 1 of the Fourteenth Amendment of the Constitution of the United States, error being assigned separately to each of said conclusions.

V.

Plaintiffs assign error to the making and filing of the final decree by the District Court on October 6, 1939, in that the evidence as a whole failed to support the findings of fact made and entered, the conclusions of law drawn therefrom, and the decree based thereon.

Wherefore, plaintiffs pray that the final decree made and filed October 6, 1939, be reversed and a decree be made declaring that subsection (a) of Section 4222 and Section 4226-a of Chapter 218 of the Acts of the General Assembly of Virginia of 1938 are void and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States and granting a permanent injunction restraining the defendants from enforcing such provisions of that statute and for such other or further relief as to the court may seem just and proper.

Respectfully submitted, (Sgd.) John Lord O'Brian, 37 Church Street, Buffalo, New York; Andrew D. Christian, 907 East Main Street, Richmond, Virginia, Attorneys for Plaintiffs.

Dated November 3, 1939.

[fol. 112] In United States District Court

[Title omitted]

Order Allowing Appeal and Fixing Amount of Appeal Bond—Entered and Filed November 3, 1939

The plaintiffs, and each of them, in the above entitled cause, having presented their petition for the allowance of an appeal to the Supreme Court of the United States from the final decree made and entered herein by the District Court of the United States for the Eastern District of Virginia, (a Specially Constituted District Court organized pursuant to 28 U. S. C. 380), on the 6th day of October, 1939, accompanied by an assignment of errors and a statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided.

It is this 3" day of November, 1939, Ordered:

1. That an appeal be and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Eastern District of Virginia, in this cause as provided by law;

2. That the Clerk of said District Court shall prepare and certify a transcript of the record and proceedings in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within forty days of this date;

3. That security for costs on appeal is fixed in the sum of $1,000, said bond to be executed by one or more of said appellants.

(Signed) Robert N. Pollard, United States District Judge.

[fols. 113-114] Citation, in usual form, showing service on Abram P. Staples, Nov. 3, 1939, omitted in printing.

[fols. 115-116] Bond on appeal for $1,000.00 approved and filed Nov. 3, 1939, omitted in printing.

[fol. 117] IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed January 18, 1939

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys; that the facts hereinafter set forth shall be taken as true, as though established by competent evidence taken in open court, provided, however, that this stipulation shall be without prejudice to the right of any party to introduce other and further material evidence not inconsistent with the facts herein stipulated to be taken as true, and further provided, however, that any party may object to the consideration by the court of any facts herein, as irrelevant or immaterial. The facts stipulated are as follows, viz:

1

Each company plaintiff in this action is a foreign or alien stock corporation, was created under the laws of the government indicated below, was admitted to the State of Virginia

and thereby became qualified to do business therein at or before the date as indicated below, and has subsequently been and now is licensed to conduct therein the casualty insurance or surety business, or both.

Company Plaintiff	Government of Creation	Date at or before which Admitted
Accident and Casualty Company of Winterthue, Switzerland [fol. 118]	Confederation of Switzerland	May 18, 1938
American Automobile Insurance	Missouri	June 29, 1921
Bankers Indemnity Insurance Company	New Jersey	November 19, 1929
Car and General Insurance Corporation, Limited	United Kingdom of Great Britain and Northern Ireland	May 1, 1928
Central Surety and Insurance Corporation	Missouri	February 8, 1927
Continental Casualty Company	Indiana	February 9, 1904
Eagle Indemnity Company	New York	August 12, 1922
Fireman's Fund Indemnity Company	California	March 17, 1931
General Accident Fire and Life Assurance Corporation, Limited	United Kingdom of Great Britain and Northern Ireland	August 21, 1908
Glens Falls Indemnity Company	New York	September 25, 1929
Hartford Accident and Indemnity Company	Connecticut	January 12, 1914
Indemnity Insurance Company of North America	Pennsylvania	January 15, 1921
London & Lancashire Indemnity Company of America	New York	July 17, 1929
London Guarantee and Accident Company, Limited	United Kingdom of Great Britain and Northern Ireland	August 20, 1907
Maryland Casualty Company	Maryland	March 12, 1904
Massachusetts Bonding and Insurance Company	Massachusetts	June 17, 1921
National Casualty Company	Michigan	January 31, 1921
New Amsterdam Casualty Company	New York	February 12, 1914
New York Casualty Company	New York	January 16, 1904
Phoenix Indemnity Company	New York	July 18, 1923
Royal Indemnity Company	New York	May 11, 1911
Seaboard Surety Company	New York	January 21, 1937
Standard Surety & Casualty Company of New York	New York	May 31, 1929
Sun Indemnity Company of New York	New York	February 24, 1925
The Aetna Casualty and Surety Company [fol. 119]	Connecticut	February 28, 1911
The Century Indemnity Company	Connecticut	March 10, 1927
The Fidelity and Casualty Company of New York	New York	February 4, 1904
The Hartford Steam Boiler Inspection and Insurance Company	Connecticut	February 12, 1904
The Standard Accident Insurance Company	Michigan	January 15, 1904
The Travelers Indemnity Company	Connecticut	June 5, 1915
The Travelers Insurance Company	Connecticut	February 11, 1904

Company Plaintiff	Government of Creation	Date at or before which Admitted
United States Casualty Company	New York	January 18, 1904
United States Guarantee Company	New York	June 10, 1929
Zurich General Accident and Liability Insurance Company, Limited	Confederation of Switzerland	September 1, 1921

2

The word "company" sometimes is used herein to refer either to a casualty insurer or a surety; the word "assured" to refer either to an insured, principal obligor, or obligee; the word "contract" to refer either to a casualty insurance contract or surety bond; other words and phrases are used with the same meanings as they are used in the complaint in this action.

3

In many instances a prospective assured is not particularly interested in the identity of the company with which his contract is to be made. Most contracts result from solicitation of the prospective assured by a person authorized by a company to act, and licensed to act, as an agent of the company, or by a person licensed as an insurance broker; or else as the result of relationship existing between the prospective assured, and such an agent or broker, such as that when the former is inferested in making a contract, he [fol. 120] consults with or instructs the latter as to the procurement of the same. In order for persons to be so licensed, they are required to be trustworthy and to have sufficient knowledge of their business to conduct the same intelligently.

4

An agent solicits and negotiates contracts directly with prospective assureds, or with brokers acting for prospective assureds. A broker makes proposals for contracts in behalf of prospective assureds to agents of companies. Successful agents so far consider the interests of assureds as to possess their confidence and goodwill and successful brokers so far consider the interests of the companies as to possess their confidence and goodwill. For otherwise an agent cannot negotiate a satisfactory number of contracts, nor a broker negotiate desired contracts with a satisfactory minimum of trouble and delay. Accordingly successful agents, just as if they were brokers, ordinarily furnish to prospec-

tive assureds the least costly available contracts providing the needed coverages, confer with and advise those to whom they sell contracts as to their insurance and surety problems and assist them in securing desired cancellations or modifications of contracts and in complying with contract provisions with which compliance is necessary in order to secure performance by the companies of their contract obligations. And successful brokers, just as if they were agents, ordinarily propose to the companies the making of contracts not involving the probability of losses in excess of those provided for by the proposed premium rates, and without compensation therefor other than the commissions hereafter referred to, see to the communication to the companies of the facts material to proposed risks, changes occurring therein after the making of contracts and misrepre- [fol. 121] sentations, which render advisable and proper the cancellations or modifications of contracts.

In Virginia since June 21, 1938, there is no provision of law for the licensing of residents as brokers. In most states containing large metropolitan centers, however, as was the case in Virginia until June 21, 1938, resident persons may be licensed as brokers, without being either authorized by companies or licensed by the state as agents, and are required to be so licensed (if not licensed as agents) if they solicit insurance therein for compensation either on account of assureds, or companies. In most states non-residents may be licensed as brokers.

The value to a particular company of the services of a particular broker, is measured exclusively by the risks placed with it and premiums thereon.

Agents who are compensated by commissions usually act for more than one company, as life, fire, marine, casualty, insurance, and surety companies, and ordinarily have no executive or supervisory duties, except that some assist brokers and assist and supervise other agents. Frequently their companies do not make all types of contracts, and where the law permits it, they act as brokers in placing with agents of other companies contracts of a type not made by their companies; and such agents frequently place with agents of other companies particular contracts even of types made by their own companies, which contracts for any reason they do not desire to make.

Brokers, and also agents who do not have the duty to assist and supervise other agents, are commonly called "pro-

ducers''; the various risks assumed in different types of contracts are commonly referred to as different "lines" of the casualty insurance or surety business.

Casualty insurance and surety companies frequently have agents known as general agents who provide and operate [fol. 122] offices for themselves and a number of producers, and while they themselves produce, they also supervise the activities of and assist the other producers working out of those offices, as well as producers who have separate offices. These general agents, like the producers, usually represent more than one company and at times act as brokers.

A Producer or general agent (not a branch manager) is compensated by commissions consisting of parts of the premiums paid on the contracts he procures.

The percentage of a premium which is customarily payable as commission varies among the various lines. The producer's commission in connection with a workmen's compensation insurance contract is ordinarily 10% of the premium, while in most other lines it is from 15% to 20%.

In addition to the ordinary producer's commissions out of the premiums, a general agent receives an overriding commission for his assisting and supervisory services based on the premiums on contracts produced by the producers working with his assistance and under his direction, and when he himself alone produces the contracts, he receives both commissions. The ratio of the amount of the general agent's commission to the amount of the producer's commission varies among the lines. But the amount of the overriding commission of the general agent is always considerably less than the amount of the producer's commission, usually being one-third or one-half thereof.

Some companies (or groups of commonly owned and managed companies) provide for certain of their agency offices to be offices of their own; and provide for the supervision and assistance of producers by agents working only for the single company providing the office. In those instances, the [fol. 123] agency offices are called branch offices, and the agents in charge of the same are called branch managers. The branch offices are maintained by and in the name of the company. As there are no overriding general agents' commissions to be paid upon the business placed by brokers with, or produced by commission agents working out of, a branch office, the amounts which would otherwise be paid to

a general agent as overriding commissions on such business are retained by the company for application to the expense of the maintenance of the branch office, including the salary of the branch manager, and other company purposes. When the branch manager of a company himself produces a contract independently of any other agent or a broker, the company might retain the amount of the producer's commission (and pay no commission), but few, if any, of the company plaintiffs have branch managers who are permitted to produce without credit being given to another agent or a broker for participation in the production.

5

The 1938 Act mentioned in the complaint is neither a minimum nor maximum wage law. Many persons registered as resident agents for casualty insurance companies and surety companies under the laws of the State of Virginia give only a part of their working time to their services as such, and receive compensation for their services other than as insurance agents, in addition to their compensation received for their services as insurance agents.

6

On September 6, 1938, the attorney for the plaintiffs wrote a letter as follows:

Hon. George A. Bowles, Commissioner of Insurance, State Office Building, Richmond, Virginia.

[fol. 124] DEAR SIR:

In the course of the various conferences as to Sections 4222, 4221-a, 4226, 4226-a, and 4235 of the Code as they now exist I understand that certain constructions have been placed by the Commission and yourself on various parts of these laws, and that the laws are being enforced, or attempted to be enforced, according to the same. To make certain that my understanding is correct I am stating these constructions below and will appreciate your confirming the correctness of my understanding.

1. That the words "contracts of insurance or surety on persons or property" in the State of Virginia not only refer to such a contract when some of the steps (other than countersignature) taken by the parties in the making of the contract take place in Virginia, but refer to such a con-

tract notwithstanding that all of said steps take place outside of Virginia.

2. That a salaried employee of a company may not secure registration under Section 4235 except as a "company representative", under no conditions being permitted to secure registration as an agent, or resident agent.

3. That "usual and customary commissions" in Section 4226-a means all the commissions payable for the production of the business.

4. That "exchange of business" in Section 4226-a covers a case where a non-resident producer sends a contract for countersignature alone, to a Virginia agent who countersigns the contract and sends it back.

5. That under Section 4226-a, a non-resident producer of a contract covering in Virginia must have a Virginia broker's license in order to transact such business, even though none of his solicitation or other activity, takes place within the State of Virginia.

Yours respectfully, —— ——.

On September 9, 1938, said letter was replied to by a letter as follows:

COMMONWEALTH OF VIRGINIA,

(Seal of State)

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

Geo. A. Bowles, Commissioner of Insurance.
C. B. Coulbourn, Actuary.
T. T. Moore, Chief Examiner.
Geo. A. Peery, Statistician.
James M. Hayes, Jr., Director of Fire Marshals.
Zelle G. Knight, License Clerk.
Courtney W. Harris, Fire Rate Clerk.

RICHMOND, September 9, 1938.

[fol. 125] Christian, Barton & Parker, Mutual Building, Richmond, Virginia.

GENTLEMEN:

We have received your letter of September 7th in regard to certain sections of the Insurance Laws dealing with

agents of insurance companies. We are giving below the construction of this department on the questions raised in your letter:

1. The words "contracts of insurance or surety on persons or property" refer to all contracts of insurance covering such persons or property in this State regardless of whether or not all steps in connection with the issuance of the policy, other than countersignature, take place outside of the State of Virginia.

2. A salaried employee of a company may not secure a certificate of registration except as a company representative.

3. The "usual and customary commissions" referred to in Section 4226-a does not necessarily mean the entire commission paid but refers to the usual and customary commission received by the so-called writing or producing agent.

4. The expression "exchange of business" in Section 4226-a covers a case where a non-resident producer sends a contract for countersignature to a Virginia agent who countersigns the contract and returns it. Of course, this expression also refers in the same section to the exchange of business between resident agents.

5. In our opinion, Section 4226-a requires a non-resident producer of a contract covering in Virginia to have a Virginia broker's license even though none of his solicitation or other activity takes place within this State.

Very truly yours, (Signed) Geo. A. Bowles, M.,
Commissioner of Insurance.

TTM:J.

The defendants and their predecessors in office have for a long period of years construed the laws now incorporated in the Code of Virginia as Sections 4222 and 4226 to apply to all contracts described therein regardless of whether or not all steps in connection with the making of the same, other than countersignature, take place outside of the State of Virginia.

7

Contracts are ordinarily made on forms printed by the company which bear lithographed signatures of its officers

which forms are made into complete contracts by the insertion of the necessary words and figures in blank spaces [fol. 126] provided therein, by the attachment of riders, and by the countersigning of the contracts by an agent authorized so to do by the company, and by the applicable laws.

8

Each natural person who is a plaintiff is the Manager of the Richmond Branch Office of one or more company plaintiffs in this action, viz: Osborn of The Aetna Casualty and Surety Company, MacNeil of The Travelers Indemnity Company and The Travelers Insurance Company, and Adair of The Fidelity and Casualty Company of New York. They have held their present positions as follows: Osborn for more than two years last past and each of MacNeil and Adair for more than ten years last past. Each natural person who is a plaintiff was continuously employed previous to his present employment for an additional period of years by the same company or companies.

Each natural person who is a plaintiff was born or has been naturalized in the United States, is subject to the jurisdiction thereof and of the State of Virginia, and is a resident of said state. The natural persons who are plaintiffs were registered and held certificates of registration under Section 4235 of the Virginia Code as agents of their respective companies, for nearly two years up to July 15, 1938, as to Osborn, and for more than ten years as to MacNeil and Adair. Osborn and MacNeil now have, and for more than two years and ten years, respectively have had their only principal places of business in Virginia; Adair now has, and for several years last past has had, two principal places of business, one in Atlanta, Georgia, and one in Richmond, Virginia. The natural persons who are plaintiffs while holding their present positions have been, and are now, authorized to solicit contracts for their companies in the State of Virginia, and it has been, and is now, a part of their duty so to do, and throughout said period the natural persons who are plaintiffs have intended to act, [fol. 127] and have acted, and at the present time they intend to act and are acting, in good faith as insurance agents. The Virginia Statutes do not prohibit their so acting in the future except that under said Statutes their countersignatures on contracts will not dispense with the necessity

for countersignatures thereof by "registered resident agents".

Except for the classification of agents as provided in Section 4221-a of the Code of Virginia and the provisions contained in the first sentence of Section 4235 of said Code, and the fact that the defendants have construed said statutes as prohibiting the same, the name of each natural person who is a plaintiff would have been filed by his company or companies on or before July 1, 1938, with the State Corporation Commission as a resident agent, and he would have procured a certificate of registration as a resident agent. But solely because said provisions were construed by the defendants to prohibit branch managers from being licensed as resident agents, and to permit such branch managers to be licensed only as company representatives, the natural persons who are plaintiffs were not permitted to procure certificates of registration as resident agents, and the names of the natural persons who are plaintiffs were filed as company representatives, and each procured a certificate of registration as such, effective July 15, 1938, which he now holds.

9

Up to June 21, 1938, or a later date, the natural persons who are plaintiffs have countersigned for their respective companies, large numbers of contracts covering in Virginia, some of which were produced outside of Virginia, and some in Virginia. No special compensation has been charged or made for any of said countersigning services, but the same have been rendered in the performance of the duties of each natural person who is a plaintiff for which performance he has been compensated by salary payments. [fol. 128] The said countersignatures have been fu nished by the said Osborn at the rate of about 125 per month, and by the said MacNeil at the rate of about 56 (his countersignatures in the main being limited to contracts produced outside of Virginia) per month, and by the said Adair at the rate of about 100 per month.

10

Where contracts of the company plaintiffs are now being and in the past have been made, and cover in Virginia, but are or were produced outside of Virginia, the contracts after being countersigned as required by Virginia law, are being

and have been delivered by agents in the states of production who are residents of such states. In said transactions no company plaintiff, up to June 21, 1938, has required or permitted agents furnishing Virginia countersignatures to collect or see to the collection of the full premiums on said contracts, or to receive the usual and customary commissions thereon. The defendants have not had knowledge until the present time of the fact of the company plaintiffs not requiring or permitting said agents to receive said commissions.

11

When contracts covering in Virginia have been produced outside of Virginia by non-resident brokers or agents, they have usually been sent for countersignature by general agents or branch offices or home offices of the companies in other states to general agents or branch offices in Virginia, and similar contracts covering outside of Virginia, but produced in Virginia by residents of Virginia, are usually sent for countersignature by general agents or branch offices in Virginia directly, or through the home offices of the companies in other states, to general agents or branch offices in other states, and the amounts, if any, formerly paid for countersignatures have usually been deducted from the amount of commissions allowed or paid [fol. 129] by the company to the agents at whose requests the countersignatures were furnished.

The laws of some states, including North Carolina, or regulations promulgated under said laws, require their agents who countersign contracts covering therein but produced in Virginia, to receive therefor the usual and customary commissions for the production of said contracts, and to retain at least 50% thereof; Virginia agents are accustomed to receive not more than 50% of the usual and customary commissions on said contracts covering in said states, the laws of which make said requirement, but produced by them in Virginia. The plaintiffs deny the validity of all such laws. The laws of a majority of the states do not make said requirement.

Numerous ones of the company plaintiffs, including those by which the natural persons who are plaintiffs are employed, have large, valuable, and expensive field forces and plants in Virginia, which cannot be removed therefrom without destruction thereof, and have had such for many

years, but the defendants deny that the Virginia statutes constitute any reasonable cause for such removal. The company plaintiffs make numerous contracts covering in Virginia but produced outside of Virginia. As to most of them the amounts of premiums thereon represent from 10% to 20% of their total premiums for Virginia coverage.

Contracts covering in Virginia, but produced outside of Virginia by non-resident brokers or agents, usually come to be so produced because the assureds with which said contracts are negotiated own property in Virginia, or have legal relationships to persons in Virginia, but have principal business offices outside of Virginia. Occasionally the property ownership or legal relationship is temporary, or intermittent. Such assured is usually a foreign corporation or a non-resident person having affairs in Virginia, though occasionally not "doing business" in Virginia. Frequently there are numerous states, other than the state of its principal business office, where such an assured has such affairs.

[fol. 130]

12

Many non-resident brokers or agents producing contracts covering in Virginia and produced outside of Virginia procure licenses by the State of Virginia as non-resident brokers, but some of them do not. Many of those who do so are persons who do not come inside of the State of Virginia to solicit, or to do other acts in connection with the making of said contracts, but have procured and paid for said licenses solely in order to qualify themselves under the Virginia laws as persons at whose requests Virginia countersignatures may be furnished, and to whom Virginia countersigners may pay or allow parts of commissions. Said licenses, however, confer upon the licensees the privileges of coming into Virginia and soliciting and transacting such business within the state. The company plaintiffs are frequently not able to require non-resident brokers or agents to secure non-resident brokers' licenses in Virginia.

13

Each of the company plaintiffs named in the table in paragraph (7) of the complaint made contracts in 1937 and in the first half of 1938, which covered in Virginia but were produced outside of Virginia, on some of which contracts the aggregate premiums for the Virginia coverage, the approximate amounts of commissions paid to the non-resident

brokers or agents who produced said contracts, and the amounts paid for the Virginia countersignatures of said contracts were as shown in the said table. The figures result from ordinary operations in ordinary periods and the said company plaintiffs are all doing business now, as formerly, and expect to continue so to do.

14

The resident broker as distinguished from the agent, is virtually non-existent in localities other than the larger [fol. 131] cities of the United States, but he is a considerable factor in production in the largest cities. The most successful producers possess the good will and confidence of assureds with large contract needs and tend to become relatively independent of the companies. In the largest cities the premiums and commissions on contracts of many individual assureds tend to be very large, because of the large aggregation in such cities of management duties and powers over capital and business employed and conducted not only in such cities but in other cities, states, sections, and countries. In the largest cities the acquirement and possession of the good will and confidence of individual assureds and the resulting ability to control the placing of their contracts tend to become more important to some producers than the representation of a company or of several companies. The contracts of many individual assureds in the largest cities involve large amounts of premiums and resulting commissions. A producer who controls the placing of the contracts of even a few of them looks chiefly to the commissions thereon for his earnings.

15

In the largest cities there are insurance centers and communities as the locality of and between John Street and Maiden Lane in New York City, with insurance luncheon clubs, and numerous other insurance organizations. Most of the brokers, general agents, branch managers, responsible company officers and employees are in frequent personal contact and short walking distance of each other.

Dated at Richmond, Virginia, this 12th day of January, 1939.

(Signed) Andrew D. Christian, Attorney for the Plaintiff. Abram P. Staples, Attorney for the Defendants.

[fol. 132] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FILING STIPULATION OF FACTS—Entered and Filed January 18, 1939

This day came the parties by counsel and presented a written stipulation of facts dated January 12, 1939, and prayed leave to file the same, and the said stipulation of facts is accordingly filed.

January 18, 1939.

(Signed) Robt. N. Pollard, United States District Judge.

[fol. 133] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER MAKING STATEMENT OF EVIDENCE FILED DECEMBER 1ST, 1939, A PART OF THE RECORD ON APPEAL—Entered and Filed December 7, 1939

It is hereby ordered this 7th day of December, 1939, that the Statement of Evidence and Exhibits designated by Appellants for inclusion in transcript, which was filed December 1st, 1939, shall constitute the evidence and the record of the objections thereto to be included by the Clerk in the transcript of the Record on Appeal to the Supreme Court of the United States.

(Sgd.) Robt. N. Pollard, United States District Judge.

We agree to the above order.

(Sgd.) A. D. Christian, Attorney for the Appellants.
Abram P. Staples, Attorney General of Virginia, and as such, Attorney for the Appellees.

[fol. 134] IN UNITED STATES DISTRICT COURT

Appellants' Statement of Evidence and Exhibits

Filed December 1, 1939

[fol. 135] Now comes the appellants in the above entitled cause and present to the Court a statement of all the evi-

dence necessary for a decision of the questions presented by the appeal herein. Pursuant to the direction of the Specially Constituted District Court, such evidence was taken by deposition.

APPEARANCES

The following appearances were entered before the Specially Constituted District Court: Andrew D. Christian, Esq., attorney for the plaintiffs, and Honorable Abram P. Staples, Attorney General of the Commonwealth of Virginia, as attorney for the defendants.

ROBERT H. NICHOLLS, being duly sworn, testified as follows:

Direct examination.

By Mr. Christian:

Q. I believe you are at present Assistant Resident Manager of the New York Office of the Casualty Department of The Fidelity & Casualty Company of New York?

A. That is right.

Q. How long have you been connected with the casualty insurance business?

A. 20 years.

Q. What were your duties in this position?

A. The underwriting and production of casualty business.

[fol. 136] Q. Is that all under your direction at that office?

A. Well, I am under the direction of the branch manager. He is my superior.

Q. And you handle this division of the business under him?

A. That is correct.

Q. Please say how brokers are ordinarily compensated.

A. Brokers are compensated by the commissions earned on premiums paid to the companies.

Q. Are there exceptions to that method of their compensation?

A. No.

Q. How do they get their compensation when they place risks of self insureds in the State Fund?

A. When they handle the self insured risk, the broker charges a service fee to the particular risk. If they place

it in the State Fund they also charge a service fee of approximately 10 per cent of the premium that would be payable to a stock company. If they place it in a mutual, they usually charge a percentage of the dividend bearing on the services that they render, or they may place it with a mutual company that pays a straight commission.

Q. Are these cases, where the broker is compensated by something other than a straight commission on premiums, rare cases in a broker's life or are they frequent occurrences?

A. I would say they are infrequent.

Q. Does a broker ordinarily have an agreement under which he represents a company, an insurance company?

A. No.

[fol. 137] Q. Are agents ordinarily compensated other than by the commissions paid on the premiums on the contracts they produce, or by the salaries they receive from their companies for their services in conferring with assureds or brokers and assisting them in making claims or other transactions?

A. No.

Q. Is it only agents who are paid by commissions who confer with assureds and brokers and advise them, and who assist them in giving notices and making and collecting claims, or do branch managers also do those things?

A. Branch managers also perform those duties.

Q. Having reference to the amounts of the producers' commissions paid as shown by the complaint and affidavits in this action, please say whether the general body of the assureds and insurers and producers seem satisfied with them and consider them reasonable, or whether they are considered unreasonable?

A. I would say they are considered reasonable.

Q. And is there a practice under which a different rate of producers' commission is payable when the coverage is in a state other than the state of production from what rate of producers' commission would be paid if the coverage were in the state of production?

A. No, not to my knowledge.

Q. What are the differences, if any, between a branch office and a general agent's office?

A. The branch office does not do any direct solicitation of [fol. 138] business; all of its business comes in through brokers or agents; and for the purpose of simplifying that,

I will mention brokers and agents in the same category as producers, whereas a general agent may also solicit and develop his own direct business in addition to the business he may take in from direct producers such as local agents and brokers.

Q. Going back to the offices themselves instead of the persons in charge of the offices, who pays the expense of maintaining the branch offices?

A. The company.

Q. Who pays the expense of maintaining the general agent's office, the general agent or the company?

A. The general agent.

Q. In whose name is the branch office conducted, that of the company or that of the branch manager?

A. In the name of the company.

Q. In whose name is the office of the general agent conducted?

A. Conducted in his own name.

Q. Now I want you to discuss the differences, if any, between the functions and duties and responsibilities of a branch manager and those of the general agent. I believe it is also true, is it not, that the general agent is always compensated by commissions, while a branch manager is always compensated by salary?

A. That is true.

Q. Leaving out those differences, are there other differences in their functions, duties and responsibilities, and [fol. 139] relationships to the company and to the assured persons, or are they alike in respect of these other matters?

A. I would say they are alike in respect of the other matters.

Q. As a branch manager are you concerned only with the production of a satisfactory volume of premiums in the various lines in which you produce, or are you also responsible for a selection of risks in such a manner as to yield a profit to the company?

A. Naturally, I would be interested primarily in developing a profit to my company, and secondarily in developing a volume of business. I can elaborate on that by saying that if I had a large volume of business that was unprofitable, I would not be considered a satisfactory branch manager to a company.

Q. Per contra, if the little business you wrote was extremely profitable but you wrote a quantity or volume of

it considered inadequate, would you also be considered unsatisfactory to the company as a branch manager?

A. I might be, yes.

Q. Does a branch manager have power to accept and reject risks and to classify those as to the amount of premiums which they should bear?

A. Yes.

Q. Does he have a duty to do this in such a manner as the business will show a profit contemplated by the premium which is fixed?

A. Yes, he does.

[fol. 140] Q. Does he have discretion in discharging that duty perhaps to take some risks of the particular producers that might not be profitable, for the sake of getting at the same time other risks that would be excessively profitable and make an average that would be satisfactory?

A. That is correct. He may, for instance, write an unprofitable part of a risk in order to obtain other forms of coverage from that assured that are profitable, so that the whole risk in itself would be considered valuable.

Q. Or you can take a particular non-profitable line from some broker for one assured to get a profitable line that that broker might be able to place with you for some other assured?

A. Practically, that is done; theoretically, it should not be done. But that is the practical operation of the business.

Q. Does a general agent have all these same powers and duties as to underwriting which you have attributed to branch managers, or does he have different powers and duties?

A. I would say that the general agent to almost the same degree has the same powers that a branch manager has, subject, however, to that branch manager's supervision if he is reporting through a branch manager. My reason for mentioning that is that some agents will report direct to the home office. If those general agents report direct to the home office, then they have the same responsibilities as the branch manager.

Q. You spoke just now of the manner in which the degree of success of a branch manager was measured, and indi-
[fol. 141] cated that it was measured as well by the quality of the business produced as its quantity. Is that same thing so of a general agent?

A. Yes.

Q. Would you say that in order to be a successful general agent a party must conform to substantially the same standards of conduct in deciding what risks to write and how far to go in insisting upon the company following a liberal claim policy, and what so-called services shall be rendered to assureds, as a branch manager would follow in connection with such matters, or would you say that a successful general agent may properly follow different standards in these regards?

A. I think that the same standards would apply for both the branch manager and the general agent.

Q. When an agent countersigns a contract not produced or written by himself, but at the request of the home office or of some other agent or branch manager in another production territory, what does he do?

A. Merely countersigns the form that is sent to him, and returns it to the office of origin.

Q. In such a case, of an agent being asked to countersign a policy which he has not produced, does he write the contract which is to be countersigned, under the practice of the business, or does the producer or the home office write it?

A. Well, in this company the producer or the branch office or the home office writes the policy, but not the countersigning agent.

[fol. 142] Q. Do you know whether that is generally true in the business?

A. It is true in so far as I have any knowledge.

Q. Do you think you know what the practice is?

A. I would think so. In my experience, that has been so. I have never had any experience that would indicate that the countersigning agent wrote the policy.

Q. You are talking here only about the casualty insurance business; you are not talking about the fire business?

A. That is correct.

Q. Where copies have to be written for filing with voluntary or compulsory company bureaus, or with state authorities, does the countersigner make those filing copies, or is that done by the same party that writes the contracts themselves?

A. We file in this company through the branch office that produces the policies.

Q. Is what you have said as to who writes the contract, also true as to amendments to contracts and copies of amendments?

A. That is correct.

Q. When a countersigner performs his function of signing his name on a contract, does he notify the party who is assured by that contract, or does he notify the party that produced it that he has countersigned it, or does he just send it back to the man that sent it to him and asked him to countersign it, and not do anything else?

A. In my experience the countersigner has merely returned it to the source from which it was sent to him.

[fol. 143] Q. Without notifying anybody else?

A. Without notifying the particular assured in the case.

Q. Does such a countersigner have any contact ordinarily with the assured or his broker?

A. Ordinarily he would not have a contact with the assured or his broker, due to the fact that he countersigned the policy.

Q. When so requested to countersign, how does he determine whether to write his name on it and send it back, or report the request to some superior and ask for special instructions, or to just send it back and say he won't countersign it? How does he determine which of those courses to take?

A. The countersigning agent usually has a list of offices furnished to him by the home office for which he executes the countersignature of the endorsements or policies.

Q. is it his duty to furnish the countersignature when requested by those authorities?

A. That is correct.

Q. And what would his action be if somebody asked him to countersign that was not on his list?

A. I wouldn't know what his action would be, but I would assume that he would communicate with the home office of the company issuing the contract to determine whether or not it was in order for him to countersign that policy.

Q. Would such a countersigner ordinarily discover any failure in the contract to provide the particular coverage which the assured wanted?

A. No.

[fol. 144] Q. Would he have any means with which you are acquainted to determine by inspection of the policy whether it did constitute the coverage that the assured wanted?

A. He would not.

Q. Suppose the premium rate was erroneously too high or too low, could he determine from a study of the policy that that was so, in every case?

A. Not in every case.

Q. Suppose the name of the assured was wholly erroneous and described an entirely different person or corporation from what was intended to be assured, could he discover that?

A. I would not think so.

Q. Would he have a means of which you know, by which he could check that?

A. Not to my knowledge.

Q. If there should be inadvertently attached to or omitted to be attached to the contract, amendatory riders or special provisions, would he be able to discover the inadvertency in most cases?

A. In most cases it would be my opinion that he would not be able to discover it.

Q. Would he have a means to know whether the attachment or failure to attach was advertent or inadvertent?

A. I would not think so.

Q. Who does have the responsibility for all these matters which you say the countersigner has no capacity to deal with?

[fol. 145] A. The producing agent or the branch office.

Q. Is it completely understood by the companies for whom these countersigners are provided, that the responsibility does rest exclusively there?

A. Yes.

Q. Does the countersigner ordinarily have a copy of the contract and of subsequent changes provided to him for retention by him purely as a countersigner, as distinguished from the fact of the retention by the Claim Department that may be in the same building or office?

A. We do not make it a practice of having the countersigner keep a copy of the contract, but we do file with the local claim office in that territory, copies of our contracts for claim service purposes.

Q. Comparing the time spent on the countersignature of a contract by the countersigner and the time spent on it by the producer, who usually spends more time?

A. The producer spends a great deal more time than the countersigner does in signing the policy.

Q. Comparing the information as to insurance matters needed to be used by the countersigner and by the producer, who needs to have more information in order properly to discharge his duties?

A. The producer.

Q. Is that discrepancy large or small?

A. Very large.

[fol. 146] Q. Comparing the efforts to be expended by the countersigner and by the producer, who has to expend more effort?

A. The producer.

Q. Is that discrepancy large or small?

A. Very large.

Q. Comparing the skill that the two men have to employ, which has to employ the larger degree of skill?

A. The producer.

Q. In comparing the responsibility incurred by the two, who incurs a greater measure of responsibility to the company?

A. The producer.

Q. Are those two last discrepancies large or small ones?

A. I would say they are large discrepancies.

Q. Supposing that only the countersigner could deliver a contract so countersigned to the assured, instead of his returning it to the party who requested the countersignature so that the producer would make the delivery, would that have any effect on the expense to the assured and the company and the time consumed in closing the contract?

A. It would increase the time in closing the contract, and it would cause inconvenience to the assured.

Q. At the time of the deliveries of contracts, is it sometimes necessary for assureds and parties making deliveries of contracts to discuss the terms thereof?

A. Yes, it is.

Q. Are they ever written for delivery in a somewhat different form from the form proposed and expected by the assured or his broker?

[fol. 147] A. Occasionally, to meet particular conditions existing on a risk, it may be necessary to alter the form by endorsements.

Q. Does it sometimes occur by reason of these matters or others that the decision of the assured as to whether to accept a particular contract in a particular form in which

it is written is not definitely made until its delivery is tendered?

A. That is right. It does.

Q. Would you say that those things could be attended to by mail and between strangers as well as they could be attended to face to face between personal acquaintances?

A. I would say a face to fact contact would be more preferable than one by mail.

Q. Would you think from your experience that assureds would as readily conduct correspondence about such matters as they would talk verbally about them?

A. No.

Q. How would it affect, if at all, the trouble and labor and cost of the accounting for producers' commissions, if the countersigner should be required to receive them instead of the producer receive them?

A. I would say that it might increase the accounting difficulties.

Q. Under the usual contracts of producing agents with their companies, and under the usual arrangements of producing brokers with company agents in respect to settlements for premiums, does the producer deduct the amount [fol. 148] of his commission and remit the net, or does he send a gross premium to the company and let it send back the commission?

A. The usual practice is for the producer to collect the premium and remit a net amount to the company, although I have known instances in which the assured insisted upon sending the entire premium to the company, permitting the company to then pay the commission to the producer.

Q. Those would be cases ordinarily where a broker rather than an agent was the producer, would they not?

A. Yes; and those are rare cases.

Q. Having reference to these brokers who produced the bulk of premiums referred to in the table in the complaint, would you say that such brokers pay any particular attention to the individual contract needs of their customers and devote large amounts of time to those needs, or would you say the business was done more or less casually and without those factors being present?

A. Well, I would say primarily it depends upon the particular broker. The successful broker today, however, is the one who devotes a considerable amount of time and study to the forms of insurance that he sells to his clients, to the

rates that he obtains through the various means of safety engineering, and so on.

Q. These brokers that produced these contracts that we spoke of in the complaint, and produced them in places like New York City and Philadelphia and Cleveland and various places around the country not including Virginia, are they brokers of that type as a general rule, or are they as a general rule not brokers of that type?

[fol. 149] A. I would say at the present time they are brokers of that type.

Q. Do they usually have small organizations or large ones, those brokers?

A. That type of broker handling national risks as a rule has a large organization, quite extensive.

Q. Are they usually afforded opportunity by their customers to study their loss experience data, or is there any reason why the customers withhold that opportunity from them?

A. Live wire brokers today obtain from the carrying company periodical reports of the loss ratio data submitted to them, and thereupon institute what they consider the necessary measures to be taken by the assured under their direction with the assistance of the company.

Q. What would be the aim and object of those measures?

A. The primary aim is to reduce the cost of insurance through reducing incurred losses. In other words, the cost of insurance directly results from the cost of losses to the carrier, and by reducing the incurred losses he can thereby reduce the cost of insurance.

Q. He can get a lower premium rate for the insurance?

A. That is right, through the rating plan applicable to the risk.

Q. Suppose an industrial corporation placing this business of which we have been speaking, places it in one policy through one producer under circumstances under which it [fol. 150] is lawful to receive a lower premium rate than if it divided that business and scattered it through various producers in the localities of coverage?

A. Through the operation of experience rating plans and also through the operation of the retrospective rating plans, and interstate rating as applying to those plans, it is to the advantage of the insured to concentrate as much premium as possible under the one contract in order to increase the credibility of the rating.

Q. Isn't it a fact that as an underwriter fixing a premium, a greater consideration should be given to the loss experience if it involved a large number of risks than if it involved only a small number of risks?

A. I would say that affecting a larger number of risks it would have greater credibility.

Q. And do I understand that it is often possible by insuring risks countrywide in one policy rather than by insuring them in separate policies in the localities of the coverage, premiums are at times lawfully reduced for these big assureds?

A. That is correct.

Q. Do you say that these brokers who produced these contracts we spoke of in paragraph 7 of the complaint, and agents who produced those contracts, are ordinarily people who gain those advantages for their assureds under those contracts?

A. Yes, I would say so.

Q. About these manuals of information and instructions [fol. 151] for employes of assureds, do the producers always pay for those things, or the companies sometimes pay for them, or who pays for them?

A. The companies, I believe, as a rule pay for those manuals.

Q. Could you give an outline of the average contents of the manuals that the employes of assureds have as to how they must act in certain conditions. Do they say to the local employes of their assureds what they shall do if they want to increase a particular coverage?

A. The broker may draw up a separate manual of instruction and furnish that to the assured to be distributed among his employes, telling them what to do in the event of certain accidents, or how to conduct themselves in the operation of an automobile. To give an illustration, we have a particular large fleet of oil trucks operating nationwide, and in cooperation with the broker we issue a manual of instructions to all drivers of that fleet, and that manual of instructions is very definite in what he has to do under all circumstances in connection with the manner in which they drive the car and what they must do when an accident arises and a claim results.

Q. You say the broker takes a part in that?

A. Yes.

Q. And the assured co-operates in that, too?

A. That is right.

Q. And all that is done right here in New York where the business is produced?

A. That is right.

[fol. 152] Q. And covers for the whole country?

A. That is right.

Q. Do these brokers confine their services to taking things as they find them in the affairs of their assureds and providing contracts containing coverages which they feel are needed, or do they also extend their service to making suggestions as to modifications of practices of the insured to remove the needs for coverages, or to lessen the breadth of coverages which are needed?

A. Of course, that to a large extent depends upon the individual broker. The successful broker today gives such services that will make the assured believe that he is actually earning his entire commission. He spends a great deal of time in analyzing his contracts, and analyzing the assured's practices, analyzing the assured's loss ratios, and in studying the rating changes that take place in the particular state. Unless he does that, he is very apt to lose the business.

Q. Do you mean by that the particular state of production, or all the states?

A. All the states in which he may provide coverage.

Q. Will these brokers be able to do this without any compensation except their commissions, in your opinion, if they only receive half their commissions for production which they now receive?

A. I would say that it would lessen the ability of the broker to perform those duties if he were to receive 50 per cent of the commissions that he now receives. In other words, it would force him to reduce his organization.

[fol. 153] Q. If he could make the assured make that up to him, however, then it would not affect his ability at all, would it?

A. No. That is right.

Q. Could these services of which we have been speaking be performed for these assureds by producers residing at places remote from the principal offices of their assureds as readily as they could be performed by the producers residing in the same places as the principal offices of the assureds?

A. It is my opinion that they could not be performed as effectively as they could be at the office of the producer residing in the same territory, or in constant contact with the head office of the assured.

Q. Is it a matter of records or a matter of employe personnel of their assureds, or what is it, a combination of both, or what?

A. I think we are developing the obvious in that, because of the fact that the insurance is as a rule placed by the assured in the particular locality in which the principal office is located; in other words, the tendency is to place the business in the large centers if the home office of the assured is in the large centers.

Q. Would you say that these services are as generally furnished by producers in small towns with small volumes of business as by producers in large cities with large volumes of business?

A. I would say, because of the fact that they do not possess a large organization, they would be handicapped in furnishing the same service that a producer in a large center would be able to give.

[fol. 154] Q. Do the branch offices and the general agents in New York City compete with the brokers for the good will of individual assureds, or do they in the main deal with assureds only through the brokers?

A. They only deal with assureds through the brokers.

Q. Why is that?

A. For the simple reason that the branch manager could not afford to ignore the producing broker or agent by dealing direct with the assured without consent of the produeing agent or broker.

Q. Suppose that instead of being a branch manager that you are a general agent, would you ignore the broker there, or would you ordinarily deal with assureds only through brokers in New York City?

A. Only through brokers.

Q. Does the general agent have the same reason, that he wants to have the good will of the brokers and get his overriding commission?

A. That is right.

Q. And if he competed with the broker?

A. If he competed with the broker, the broker would naturally assume that he was building up a further competition in connection with the handling of his risk. It would

be not to his advantage to deal with that kind of a borough agent or general agent.

Q. I will ask you to assume that in 1937 the total premiums for Virginia coverage, as returned for premium taxation by the Travelers Insurance Company, was $1,056,951, and that The Aetna Casualty & Surety Company's similar figure was $464,564, The Maryland Casualty's similar figure $539,236, [fol. 155] and your company, The Fidelity & Casualty Company of New York $486,603. Leaving out the Travelers, is there any single firm of brokers in New York City, one of which places with one plaintiff company in one year contracts with as much premiums as the whole Virginia premiums of that company?

A. Yes.

Q. Does such a firm only place its casualty and surety contracts with substantial amounts of premiums in one casualty company, or will such a firm divide its business in substantial parts between two or more companies?

A. Two or more.

Q. Will such a firm also place fire insurance contracts involving substantial premiums?

A. Yes.

Q. Among the agents and brokers in New York, who you would estimate to place business with $1,000,000 or more in premiums annually, would you say that there were only one or two such firms, or from ten to twenty?

A. I would say there were from ten to twenty.

Q. Was this business in some years, according to your estimation, with particular brokers' firms greatly in excess of $1,000,000?

A. In some instances it would exceed greatly $1,000,000; in rare instances.

Q. Do the more important ones of the brokerage firms have offices only in one city, or do the more important of these firms have offices in various cities of the country?

A. The more important have offices in various cities.

[fol. 156] Q. If your company or individuals among the plaintiff companies should have declined to pay the brokers who produced the contracts referred to in paragraph 7 of the complaint, commissions at the rates you did pay, and when offered that business had stipulated you must have it at commissions of one-half of those rates, or if you should now make such a change effective, what effect would it have had on business in the past, or in your opinion would

it have on business in the future, so far as your company getting its part of it?

A. I believe it would drive a certain portion of that business into the hands of the mutual companies or State Funds or Lloyds Associations.

Q. Are there or not honestly administered and sound financially companies that are not qualified in all the states of the Union?

A. Yes.

Q. Would it be practicable for some of this coverage to be placed in companies not admitted in Virginia, without loss of their commissions to their producer?

A. My thought on that would be that it would be a tendency primarily to place that business with an admitted company, but a company not paying a commission, but where the broker or producing agent might obtain his remuneration through a portion of the dividend.

Q. Are you sufficiently familiar with relations between producers of your part of this business referred to in the complaint, with the assureds, and the relations of your com- [fol. 157] pany itself with these assureds, to have an opinion that you would consider reasonably well founded, as to the extent to which these producers could have taken this business away from your company if they wanted to?

A. Yes.

Q. Will you try to discuss that situation, in order to bring out fairly on the record to what extent these producers could have diverted this business away from your company if they wanted to?

A. It is not only the producers that could have diverted it, but taking the instance of the large oil risk that I have just cited here, if we should, through the increase of the total cost of the acquisition of that business, increase the cost to the assured, I am fairly confident—in fact, I am completely satisfied—that that assured would no longer carry insurance in this or any other company, but would probably go into self insurance, and that the only reason why they are carrying insurance in this company is due to the fact that we have this restricted acquisition cost.

Q. Having reference to the Aetna or the Maryland or the Travelers, if your company cut these producers' commissions and any of those companies did not cut them, would the producers in ordinary cases, have the capacity to transfer the business to those companies, or would they not?

A. I think in ordinary cases they would have the capacity to transfer those cases to companies that would not reduce the producers' commissions.

[fol. 158] Q. But you would limit that by saying that there is a proviso attached to it, that they are prominent and reputable companies with good organizations, paying their liabilities and servicing contracts?

A. They would have to be reputable; that is right.

Q. I think you are familiar with the thirty odd plaintiff companies in this suit, and are familiar with the fact that other leading companies, such as the American Surety Company, National Surety Corporation, U. S. F. & G., Employers Liability, and various others, are not among the plaintiffs. Would it be equally practicable for a broker to transfer contracts heretofore placed with your company to such companies as those I have mentioned?

A. Yes, it would be possible.

Q. You use the word "possible" there. I used the word "practicable".

A. Well, it might be practicable.

Q. In the efforts of a branch manager in your city to increase the production of his office, or any similar efforts of the general agent, would it be an unusual or extraordinary thing for him to approach a broker to give to his office or his agency a part of the brokerage business hitherto given to the offices of other companies or given exclusively to the offices of other companies or of other agents? I ask you, would that be an unusual thing?

A. No, that is a common practice.

Q. In making such an effort, would such a general agent or branch manager customarily go to the assured, or would [fol. 159] he go to the broker that placed the business, to get that shift made?

A. He would go to the broker that placed the business.

Q. Would you say that his ability to get such a shift made, would be materially influenced by the friendliness of the broker to the idea of making the change, or would you say that the friendliness of the broker to making the change would not be very important?

A. I think it would be of paramount importance to the making of the change.

Q. Is it a matter of reasonably frequent occurrence, that for one reason or another when such efforts are made they are successful efforts?

A. Yes. Except in rare instances, the broker can pretty well determine the placing of the business by a company.

Q. You mean by an assured?

A. No, his placing by the company, that is, in the company.

Q. He can pick out the company?

A. He can pick out the company, except in rare instances.

Q. Are you informed as to whether or not there are any of the larger mutuals who pay commission?

A. Yes. I know there is one larger mutual that pays commissions.

Q. Is that the Lumberman or the Liberty?

A. Lumberman.

Q. Are there any brokers in New York that place business with these mutuals?

A. Yes.

[fol. 160] Q. Please state to what extent, if at all, the cost of casualty and surety protection has been a decreasing or increasing factor, with the passing of recent years, in the problem of nationwide corporations doing business sectionally or nationally to operate at a profit.

A. It has become a very important part of the every-day administration of these national organizations, and as such these organizations have organized their own insurance departments under a competent insurance manager, to reduce as much as possible the total cost to them of their insurance premiums.

Q. Is that personnel scattered throughout the territory of its industrial or commercial operation, or is it centered in the home offices, or in a very few divisional offices?

A. The Insurance Department as a rule is centered in the home office.

Q. Has this development of having at the home office personnel devoting particular attention to insurance matters, had any effect on the practices of these large assureds in reference to whether they place their various contracts in the different localities of the coverage or place them in the locality where their insurance personnel is located?

A. It would have the effect to have the assured place the insurance in the particular locality where the insurance manager or where the Insurance Department was located.

Q. Would you say that there is a greater tendency today to do that sort of thing than there was ten years ago?

A. I would say that the tendency is increasing all the time.

[fol. 161] Q. Do you think that is the result of change of attitude by the management of these assureds, or is it not possible that there is simply more absentee ownership and control of business and property and risks today than there was five or ten years ago, or twenty or thirty years ago?

A. I would say it is due to the increased concentration of the particular large risks of their departments at one home office location.

Q. If a chain store or one of these distributors of gas and oil, of which you have been speaking, or a bus line doing business through a number of states, adopts a policy to cover certain risks and to cover particular risks in particular amounts, does it usually have a different policy in one locality from what it has in another locality of its operations, or would it have $10,000—$20,000 automobile liability probably all over the territory, and if it has automobile liability on any of its tank trucks, would it likely have it on all of them?

A. If it has it on any of them, it would probably have it on all of them, and it would have it covered under a blanket policy with schedules showing the various exposures, and listing the equipment covered under that contract.

Q. And the same way as to the bus company, if it had liability policies on its buses running between Richmond and Washington, it would probably have the same kind or amount covering on the trip between Washington and Baltimore, or Baltimore and Wilmington, or Philadelphia and New York; is that right?

[fol. 162] A. It would probably have the same limits as this oil fleet I just had reference to, that carries different coverages on different types of vehicles.

Q. I am talking about the same type.

A. On the same type they would carry the same limits.

Q. Taking the chain theatre, like Loew's, or Wilmer & Vincent, I do not know how they place their insurance; if they had a public liability policy on a house at Norfolk, would they likely have the same kind of coverage on their houses in Richmond, in Washington, in Baltimore, in Philadelphia, and so on?

A. Yes, they would carry the same amount of liability coverage in all cases.

Q. And the same kind of coverage?

A. Yes.

Q. And that would be so, perhaps, of hotel chains, drug chains, utility companies, in different states and the like?

A. Yes.

Q. Would it be fair to say, then, in discussing the terms of such a contract and the premiums to be charged, and the amounts of the coverage with various different producers in various different parts of the country, a representative of an assured would, to a large extent, be discussing similar things with these separate people?

A. Yes. He would be at that disadvantage.

Q. And if he had one producer through whom he placed all this coverage, his time and labor would be then greatly abbreviated?

A. It would be greatly reduced.

[fol. 163] Q. Having reached an understanding with one producer that you want, for instance, a $10,000-$20,000 coverage on a certain type tank truck all over the country, does he cause to be issued to the assured a separate policy covering each of these trucks, or does he issue one policy covering them all?

A. We issue a blanket policy, with a schedule attached to the policy giving a list of the equipment covered.

Q. And that would be so even if coverage was in a number of states?

A. That is right.

Q. In such a situation the company issuing the policy would discharge its duty under the laws of the various states where so required, either to issue underlying policies or procure counter-signatures, would it not?

A. That is right. It would issue underlying policies for filing purposes and for counter-signature purposes.

Q. So far as the assured was concerned, as distinguished from the obligation of complying with these laws in these scattered states, he would get one master policy?

A. He would get the one contract.

Q. And when it came to accounting for his insurance costs, he would only have one account about that contract, of one premium?

A. That is right.

Q. And when the assured paid the premium, he would make one payment to one producer for all of it?

A. Yes. I may say at this point that the tendency today [fol. 164] is towards simplification of all of the contracts and forms of coverage through the issuance of one contract rather than through a number of contracts which the assured would have to wade through.

Q. Am I correct in my understanding that contractors, expecting from past experience to do work in various parts of the country, and not knowing from time to time where they are going to work next, procure forms of workmen's compensation and liability contracts in which neither the places of coverage nor the amounts of premiums to be paid are known at the time the contracts are written, but which automatically cover everywhere in the United States and sometimes in Canada, with annual audit determinations and settlement of premiums?

A. Yes. The tendency is to issue a blanket compensation or contractor's public liability policy covering wherever the assured may operate, if he is a contractor or a large industrial organization.

Q. Does this have the effect of reducing the labor and time of the assured, by dispensing with the necessity of his making these contracts for the individual coverages in the states, of various works?

A. Yes, sir.

Q. In such cases would it be practical to allocate premiums of commissions or premium taxes to producers or to states in the various localities at the time the contract is made?

A. I do not believe it would be possible.

Q. If such should be required, would it be necessary to cease to write these particular forms of contracts?

[fol. 165] A. No, it would not, but it would increase the difficulty in handling that type of contract. For instance, we may issue a blanket contractor's policy at a nominal deposit premium; and subsequently on audit that premium may run to $1,000 or so. It is only after the audit is made on that contract that we can determine the states to which the premium should be allocated, or the coverage.

Q. The fleet automobile liability policies also cover cars of described types, though acquired in new localities during the term of the contract, do they not?

A. That is right.

Q. And this is true of the form of various other blanket contracts?

A. Yes.

Q. In many cases there would be locations of risks not at one point in a state, but at numerous points in a particular state, would there not?

A. That is correct.

Q. And an allocation as between different agents and producers in a particular state would also involve the same difficulties?

A. Yes.

Q. Would you say, from your knowledge of their operations,—and if you do not feel you have information in the matter, of course you are at liberty to say so—whether it is the custom of the oil and gas distributors to have at their filling stations, or the theatre chains to have at their vari- [fol. 166] ous moving picture houses, or the merchandising chain stores to have at their various stores throughout the country, records covering insurance transactions and employees dealing with those matters?

A. The only record I believe a local theatre manager or a gasoline station or merchandise unit would have, would be the name of the nearest claim office of the company carrying his insurance, so that they would be able to report promptly the accidents that occur in connection with that operation.

Q. And if that company adjusted claims through an independent adjuster, or an attorney, rather than through its own company-maintained Claim Department, he would have the address of the independent claim adjuster or attorney; is that right?

A. That is right.

Q. Going on with this discussion of these contracts mentioned in the complaint, if an assured should decide that instead of having a $10,000-$20,000 limit of coverage on particular vehicles, or $10,000-$200,000 limit on a particular public liability contract; and he wanted to change his limits to $20,000-$40,000 or $20,000-$400,000, would it be practicable for him, if that business had been placed with one producer, to secure those changes country-wide by the one direction?

A. Yes, sir.

Q. Similarly, if he wanted to reduce them to $5,000-

$10,000, or $5,000-$50,000, if placing his business with one producer it could be done in one interview?

A. That is right.

[fol. 167] Q. Are decisions of that sort made at the principal offices of the assureds?

A. Yes, sir.

Q. When an assured comes to select a producer through whom it will place its contracts, what standards would you say were observed by an assured in making that selection?

A. Well, a producer is selected first for his standing in the community, his reputation as an insurance man, the particular companies that he may have contacts with, and the type of assureds and risks that he may now be servicing or placing.

Q. Speaking generally, is it fair to say that assureds generally go through these processes in selecting their producers through whom they place contracts?

A. I would think so.

Q. Suppose an assured embarked on a policy of segregating his coverages to the various localities of the coverages, would it sometimes be, supposing there are ten coverage localities, that the ten agencies that he would think were the most suitable for his purposes in those localities might represent among them a considerable number of different companies, and not all ten represent the same company?

A. That is correct.

Q. Would you sometimes encounter situations where the most suitable local agent did not represent the most desirable company?

A. In certain communities that might be possible.

[fol. 168] Q. Wouldn't you often encounter situations where the most desirable agent though representing a company very desirable for certain coverages was not recognized as being so desirable a company for other coverages?

A. Yes. For instance, the particular agent might represent the company that had a splendid service organization for the servicing of a chain of theatres, in other words, its particular claims organization would be such that it was particularly adapted to servicing that kind of a risk, whereas that same carrier, insurance carrier, would not be as well qualified to administer the claims services on a large automobile fleet or on a particular malpractice form of

coverage, if they were insuring, for instance, a society of dentists or doctors, which is a particular type of claim, technically involved, in that kind of a risk.

Q. Illustrative of that, the Aetna in certain localities is peculiarly preferred for the malpractice liability?

A. That is correct.

Q. Would it be a correct assumption that ordinarily either a producer or a company could act more efficiently in the interest of the assured in respect of coverages of which it happened to have had a large volume, and therefore a large experience?

A. Yes, I believe so.

Q. Are there any producers in New York City or elsewhere, which have a general reputation for being specialists in the handling of particular coverages or the casualty and surety needs of companies in particular lines of business?

[fol. 169] A. Yes, there are. For instance, there is one broker that has a number of oil risks, another broker that handles a large volume of theatre liability insurance, and some other brokers specialize in the writing of chain store lines.

Q. And is there a tendency for other assureds with those needs, to go to people with thus established reputations in those particular lines?

A. The tendency is for the broker that handles one risk of that type to solicit other risks of that type through the contacts that he has built up and through the reputation that he has built up with one particular assured.

Q. In other words, if he places one theatre chain the personnel is apt to be acquainted with the personnel of other theatre chains, and it helps him to get the other chains?

A. That is right.

Q. There is the man I believe you mentioned to me the other day who has an outstanding reputation as a specialist in the coverage of transportation corporations; is that right?

A. That is right. He specializes in the handling of railroad and truck line insurance.

Q. And that has a snowball effect, that reputation?

A. That is right.

Q. Is it your observation or information that these specialists are developed as readily in the smaller communities

and localities as in the larger centers of population and wealth?

A. It is my observation that they are developed in the larger centers of population.

[fol. 170] Q. Upon the assumption that an assured with a principal office in New York City has placed its business sectionally or nationally with a producer in New York City, and that a controversy arises between the assured or his broker representative on one hand and a company on the other, or that any exceptional questions arise between them though not necessarily controversial, is it customary for the parties to meet personally and discuss that, or do they correspond by letter?

A. They usually meet personally to discuss such problems.

Q. Please say whether these assured placing this business in the locality where the principal office of coverage is in other states suffer detriment through not having placed it through various producers in the various coverage localities, and if you think they do suffer detriment, state why you think they do suffer it.

A. Well, in the various contacts I have had with the assureds over a number of years—and I have contacted some of the leading national corporations, and many of their executives are personally known to me—I have never found a particular case in which any of them suffered any hurt through the fact that their business was placed through one producer.

Q. Are you aware of the fact whether or not there is sometimes a loss of local good will involved through not patronizing a local man?

A. I could not say whether there is or not.

Q. Am I to conclude that you think these assureds not [fol. 171] patronizing the local men in the coverage localities are just as favorably positioned when claims arise as they would be if they had a local man interested in pressing their claims for them?

A. I would say that due to the fact that the claims are handled through the salaried representatives or the claim representatives employed by the companies, that this has little or no effect.

Q. What about inspections when they are either desired by the companies or desired by the assureds for contract purposes? Are they as easily available to people who have

not had a producer concerned in the locality of coverage as they are available to people who have had such local producer concerned?

A. Yes. They are just as easily available.

Q. They are also made by salaried people, are they?

A. By salaried engineers and inspectors of the companies.

Q. Would you say then that there would be no variation between the results to the assured of his having a workmen's compensation risk in far Southwestern Virginia placed through a New York producer, or having had it placed through a Norfolk producer or a producer in Giles County or Lee County, Virginia; or would you say that there would be variation in the results, relative favorableness of the results to the assured because of the variety in the location of the producer between New York City and Norfolk and Lee County or Giles County, Virginia?

A. I believe that if it were part of a blanket contract covering in various localities that there would be no variation in the service rendered by the company, simply be- [fol. 172] cause it was placed through a New York producer rather than through the local producer.

Q. Suppose The Life Insurance Company of Virginia placed its public liability contracts on all its foreclosed real estate through many states with one producer in Richmond, Virginia, or suppose that the Universal Leaf Tobacco Company put its liability lines in its various localities, or suppose that the Richmond Greyhound Lines covered its buses both on its Virginia routes and other routes with a Richmond producer, would you say that those assureds would be in all respects as well off as if, as to the life insurance company, they had gotten a separate policy on each foreclosed piece of real estate, and as to the Universal on each plant, and as to the Richmond Greyhound, on the lines in each state?

A. Yes, I would say they would be just as well off.

Q. Having reference now to risks which are in different parts of a particular state though all in the same state, as, for instance, a chain of theatres with its head office in Richmond, but with theatres throughout the state, is it your idea that if all of that business was placed through a producer in Richmond, all that would be expected of a producer would be gotten as readily as if the business were split up and a piece of it put into each locality where there was a theatre?

A. I would think so.

Cross-examination.

By Mr. Staples:

Q. What territory is within the scope of your office?

[fol. 173] A. We write risks covering throughout the United States. We produce risks through New York brokers and agents in the five boroughs of New York City.

Q. The territory within which your office is active in the soliciting of risks from brokers, is New York City, then?

A. That is correct.

Q. Do you have any local agents of your company in New York City?

A. Yes, we do.

Q. Do they represent other companies than yours?

A. They may.

Q. What is the particular difference in the relationship between your company and one of its agents, and your company and a broker?

A. If the agent that you have reference to is a borough agent, the difference is rather marked; in other words, the broker or local agent is looked upon as a producer, whereas the borough agent is a producer through the broker or local agent. He acts in a sort of supervisory capacity for the production of business through these sources.

Q. He has working for him what you might call solicitors or subordinate agents?

A. That is correct.

Q. Do these subordinate agents who work for him have authority to countersign the contract?

A. No. Those solicitors who work for the borough agent or the general agent, in my knowledge only act to develop [fol. 174] business from other agents and not as direct solicitors of assureds.

Q. You mean that the persons employed by a general agent do not directly solicit business from an assured in New York?

A. I am talking now of a borough agent.

Q. What is your answer with reference to a general agent?

A. A general agent, yes, a general agent may have employes working for him to solicit direct from assureds.

Q. And a general agent also solicits direct from assureds, does he not?

A. That is correct.

Q. The general agent compensates the agents under him by giving them a certain part of the commission?

A. They give them the producer's commission.

Q. And he on that business receives in addition an overriding commission?

A. Yes.

Q. When a contract is brought to your office by an agent or a producer, do you or anyone in your office make any direct contact with the assured and discuss the matter with the assured?

A. Yes, very frequently.

Q. Why is that?

A. It assists the producer in selling his assured, and not only at the time of the solicitation but frequently during the period of the contract and over a period of years I am in constant contact with assureds and principal officials of such assureds.

Q. But you do not undertake to go direct to them and write any business of your company leaving out the broker or the agent?

[fol. 175] A. Oh, no. All of the contacts are arranged for through the broker.

Q. And at his invitation, I suppose?

A. At his invitation in most instances. In certain particular cases where we become, as the company employe, well known to the assured, there is an understanding between the broker and the company that the assured can contact the particular individual in the company at any time at his convenience, without having to pass through the broker.

Q. That contact still is at the invitation of the broker?

A. That is at the implied invitation of the broker.

Q. Do the rates of the producer's commissions vary in the different states?

A. They may vary. For instance, workmen's compensation commissions are at a different rate in certain states.

Q. Within what ranges do they differ?

A. Within a very small range. For instance, the producer's commission in New York is eight and one-half per cent.; the producer's commission in most other states is ten per cent. The overriding commission in New York is 6½ per cent, in most other states it is seven and one-half per cent.

Q. If a broker brings you a contract in a state where the producer's commission is ten per cent, what do you pay the broker in New York?

A. The broker gets the rate of commission that is paid in that state.

[fol. 176] Q. In the state of the coverage?

A. That is correct; in the state of the coverage.

Q. Does he get the broker's commission or producer's commission, or does he get the same commission the general agent would get in the state?

A. He gets the producer's commission, the broker's commission.

Q. What is the difference between that and the general agent's commission, if it is a Virginia contract, let us say?

A. I do not believe I would be qualified to give you the difference in the commissions there.

Mr. Christian: Is that workmen's compensation insurance?

The Witness: No, I do not think it is limited to any form of insurance.

Mr. Staples: No, it is not.

Q. You are not able to state, then, whether the New York broker would receive the entire commission which would have gone to a Virginia general agent if the contract had been written through such general agent?

A. I am able to state that the New York producer would only receive the straight brokerage commission in New York.

Q. And what would become of the difference between the general agent's commission and what the broker gets?

A. I would not be able to tell you that.

Mr. Christian: Counsel for plaintiffs would admit that if it is not paid to anybody by the company, it will remain in [fol. 177] the treasury of the company, and would be available not only to meet production and field supervision costs, but other expenses of the operation of the company, if that is what you mean.

Q. I believe you said that you worked in the Rating Bureau at one time?

A. That is right.

Q. What elements, generally speaking, compose a rate? What factors go into the making of a rate?

A. The elements entering into the make-up of a rate are the incurred losses, or, in terms of rate, the pure premium plus the overhead factors such as acquisition cost, claims expense, inspection costs, the home office administration, payroll audit expense, and taxes.

Q. What is included in the term "acquisition cost", as used by you?

A. Acquisition cost includes the producer's commission and the supervising agency commission.

Q. Do you mean the overriding commission of a general agent?

A. Yes, or a branch office.

Q. Does a branch office have any commissions?

A. No; a branch office operates on a salaried basis, but the difference between the local agency commission or the producer's commission and a supervising agency's commission is taken up in the salaries of the branch office.

Q. It is not paid, though, in the form of commissions to the employe of the company?

[fol. 178] A. No, it is not.

Q. But the company is saved that overriding commission which a general agent would get if the office was operated by the general agent as his own office and he did the supervising of the other agents who were producing the business; is that correct?

A. Yes. The general agent, in receiving the maximum commission on the risk, functions in much the same manner as the branch office. In other words, he pays his local brokers out of that total commission, whereas the branch office pays the local brokers the same way.

Q. Do you have a separate factor for field supervision expense?

A. Yes.

Q. What is that called?

Mr. Christian: I herewith file, as Plaintiffs' Exhibit No. 1, the National Rules regarding acquisition and field supervision costs for casualty insurance; and, as Plaintiffs' Exhibit No. 2, the National Rules regarding acquisition and field supervision costs for fidelity, surety and forgery business; also a supplement to Plaintiffs' Exhibit No. 1, to be designated as Plaintiffs' Exhibit No. 1-A.

(The papers referred to were accordingly marked as exhibits by the Notary Public: Plaintiffs' Exhibit No. 1, Plaintiffs' Exhibit No. 1-A, Plaintiffs' Exhibit No. 2.)

A. I refer to paragraph (b) of page 3 of Plaintiffs' Exhibit No. 1.

[fol. 178a] EXTRACT FROM PLAINTIFFS' EXHIBIT 1

C. Field Supervision Cost shall specifically include the following items:

1. Remuneration to Agents, Branch Office Managers, Assistant Managers and Salaried Special Agents.

2. Traveling expenses of Agents, Branch Office Managers, Assistant Managers and Salaried Special Agents.

3. The cost of policy-writing in Agencies and Branch Offices.

4. The cost of collection of premiums in Agencies and Branch Offices.

5. Rent, heat, light and maintenance of Agencies and Branch Offices.

6. Renumeration of clerical office force in Agencies and Branch Offices.

7. Exchange, advertising, postage, telephone, telegraph and express in Agencies and Branch Offices.

[fol. 179] Q. Who compiled these documents that you have just filed, these rules?

A. They are compiled by the Acquisition Cost Conference of the National Bureau of the Casualty and Surety Underwriters.

Q. What amount, or what percentage of the total premium for the payment of commissions to so-called brokers is there in these rules, if there is any specific provision for brokers?

A. That will be found in Item 4, page 2, as to the producers in various states.

Q. Is there any specific designation of a broker by the word "brokers" in these rules?

A. Brokers are classed as producers in accordance with paragraph 3, page 1.

Q. The specific point I am trying to get at is whether there is any provision here as to the rate of commission which is to be paid a broker, as distinguished from the amount of that particular factor of the premium which shall be used for the payment of the other items contained under the headings Field Supervision Costs and Production Costs and Acquisition Costs.

A. Yes. The acquisition cost is the remuneration paid directly to the producers, whereas the field supervision cost is the additional allocated to branch offices or general agents for their field supervision.

Q. These rules state that acquisition cost shall mean commissions to agents and producers: "No agent or producer receiving a commission shall receive any salary or [fol. 180] allowance of any kind except as hereinafter provided." What other provision is there that makes an exception permitting the payment of a salary to an agent or a producer who receives commission?

A. None that I know of.

Q. I believe you stated that it is customary for a branch manager to investigate and pass on the desirability of risks which are offered to the company; is that right?

A. That is right.

Q. Does your general agent also perform this function?

A. Yes, he does.

Q. A general agent, as I understand it, is the owner of the business that he builds up and produces from the standpoint of the future, is that correct?

A. That is correct.

Q. Does he not occupy a different relation to the assured from a branch manager of a company?

A. Theoretically he does; practically I believe his interests and the interests of the branch manager are very similar, both to the assured and to the company.

Q. Who establishes the policy of a branch office: the company or the branch manager?

A. The company.

Q. Who establishes the practice of a general agent's office: the general agent or the company?

A. I would say the company.

[fol. 181] Q. How many companies does a general agent generally represent?

A. One.

Q. Only one company?

A. As a rule.

Q. Do you know how many companies Davenport Insurance Corporation of Richmond represents?

A. No, I do not.

Q. Suppose it does represent more than one company, I will ask you to assume that it does represent more than one company, then which company establishes the policy of its office?

A. I would say that the company that it represents establishes the policy of its office as regards the business that it writes for that company; by that I mean the underwriting policy of the agency is established by the company.

Q. You confine yourself to the underwriting policy, then?

A. That is correct.

Q. In my question as to policy I had in mind more the policy of service to the assured.

A. That I believe would be developed by the agent himself as an agent; that would be his own policy.

Q. So that a branch manager has that policy established for him by the company, but a general agent would establish that policy for himself?

A. In so far as his service to the assured is concerned, that is correct.

[fol. 182] Q. Are you at all familiar with the activities of your resident agents in Virginia, outside of your branch managers' offices there?

A. No, I am not.

Q. You do not know anything at all about the service that these local agents render, do you?

A. No. I do not.

Q. Then if you are not at all familiar with the services rendered by your own local resident agents as distinguished from your branch managers in Virginia, the testimony which you have given on that subject is not given in the light of any information at all with reference to the conduct of business by resident agents in Virginia, is it?

A. Only with reference to the business that is produced through my own office; and on that I can speak with knowledge and authority, because I know that our assureds or my own office does not call upon the local agents in Virginia to service our risks.

Q. Do you mean risks produced in New York?

A. Produced in New York.

Q. Under the custom which has prevailed in the past, the resident agents have not had anything to do with that business, have they? They have not countersigned policies; they have not received commissions; consequently they would not be called upon for any services; is that correct?

A. That is correct.

Q. In other words, they have not been associated with the broker at all in handling that business?

[fol. 183] A. That is correct.

Q. As to what would be the service rendered by those local agents if they were so associated with the business and received part of the compensation for servicing the contracts, you are unable to state?

A. I can not tell, because that has not transpired yet.

Q. Is it customary for any brokers to place business in your company direct with resident agents in Virginia, as distinguished from branch managers?

A. You mean New York City brokers?

Q. Yes.

A. Not to my knowledge.

Q. You spoke of these combination rates which are obtained by the brokers where policies cover risks in a number of states, that is, one policy covers risks in a number of states, and you state that the combined rate is less than the sum total or aggregate of the separate rates which would apply if separate policies were issued in each state for the coverage involved in such state. I will ask you to explain how this is arrived at.

A. I believe I said that the rate had a greater credibility, and my thought involved is that that matter could be better explained by Mr. Leslie, who is an expert in the calculation of those rates.

Q. Do you not feel that you are able to explain that?

A. I think he could explain it better than I could. Yes.

Q. I believe you stated that a local resident agent was not in a position to know anything or find out anything about [fol. 184] any risk when he countersigns a policy. Isn't it true that if a local agent inspects a policy and he knows that the transaction covered by that policy or risk covered by that policy is located in Virginia, that he is able to familiarize himself with the factual situation presented?

A. My experience has been, that on business produced in New York City the local agent is rarely called upon by the local foreman or superintendent of a plant to render service

in that particular locality in regards to inspections or things, unless the business is placed through that particular agent.

Q. It has not been customary to place many of them through local agents in the past, has it?

A. That is right.

Q. But when they are placed through local agents, then that local agent can obviously get in contact with the local manager of the plant, or what ever the industry may be, and familiarize himself with the situation. Is that true?

A. He would of necessity have to do that.

Q. Then when a policy is sent to one of these countersigning agents who is to receive a part of the commission, naturally if he wants to discharge his duty he would do that, wouldn't he?

A. He might. He has never done it heretofore.

Q. He has never been given any part of the commission heretofore, has he?

A. That is correct.

[fol. 185] Q. There is no reason why he should have done it heretofore, is there?

A. He has been getting countersigning commission for doing it, but a very small amount.

Q. Has it been customary for your company to have its branch manager countersign?

A. I believe so.

Q. They have not paid him anything for that, have they?

A. No, not to my knowledge.

Q. Assuming that a local resident agent to whom a policy or contract is sent for countersignature has the contract before him and notices an apparent irregularity of some sort which raises some question in his mind as to whether the contract is properly drawn, he of course can inquire and raise any question that he likes with the broker, or he can also get in contact with the local representative of the assured; is that true?

A. That could be done, but I do not believe the local representatives of the assured would know enough about the business of insurance or the placing of that contract on a risk emanating from New York, to be able intelligently to discuss that particular phase of that business with him.

Q. He can at least raise that question with the broker and let the broker take it up with the New York representative, can he not?

A. I believe the full responsibility for the placing of insurance is in the home office of the assured where the con-
[fol. 186] tract emanates, and whatever conditions exist in connection with that risk, the insurance coverage and the responsibility for placing that insurance coverage is at the place where the business is produced and not where the particular policy may be countersigned.

Q. Then if a question of the kind I have referred to occurs to a local resident agent who is requested to countersign a policy, and if he has some question in his mind about the provisions of the contract or whether it is in proper form to cover the particular risk sought to be covered, your idea is the proper procedure for him to follow would be to communicate with the broker in New York or the New York agent who procured the contract and let that broker or agent take the matter up with the assured?

A. That is correct.

Q. You spoke of the expensive plant and equipment that these brokers establish in New York. What is the nature of that plant and equipment? What does it consist of?

A. Well, it consists of a number of experts in the various contractual needs of the assured. It consists of an Engineering Department. It consists of what we consider loss control work in tabulating and compiling accident records and assisting or working with the companies in loss prevention and loss control work.

Q. The companies have their loss control and loss prevention departments themselves, don't they?

A. That is correct, but the larger brokers, in order to earn their commissions and to justify their existence with the
[fol. 187] assured, have a very extensive plant of their own to supplement the work of the particular company with which they place the business.

Q. In other words, they do over again the same work that the company has already done?

A. I would not say that they do it over again, but I say that they supplement or assist or help the companies to do it.

Q. What do they do that the companies have not already done, or the various companies that they deal through?

A. They make in certain instances a more concentrated study of their assureds' needs than the company does. In other words, the company may establish with the co-opera-

tion of the assured, a safety engineering organization. The producing agent or producing broker may take part in that and supplement the efforts of the company; in other words make a more intensive campaign towards safety than the company or the assured alone would make, depending, of course, upon the particular broker or producer.

Q. Give me an illustration of what you mean by a safety campaign.

A. Take for instance a large fleet of a dairy risk located in Philadelphia. We insured that risk for automobile insurance, and we had a very high accident frequency and a very high loss ratio. The producing broker at considerable expense to himself, employed the services, the outside services, of a loss control expert, who made a study, in addition to the safety engineering activities of the company, of the particular and peculiar causes that existed in this particular risk, and as a result of that reduced the loss ratio to a very [fol. 188] large extent, and subsequently, of course, the rates followed suit.

Q. What do you mean when you say he employed an outside expert? In addition to his regular staff?

A. In addition to his regular staff, he engaged the services of this loss control division.

Q. Then that is not part of the regular services that that broker performs with his equipment and plant, is it?

A. It is. It is the service he now performs, having seen its efficiency and effectiveness.

Q. Then he has a regular staff of engineers?

A. That is right.

Q. And where do those engineers go to make that study?

A. The records of the accidents and losses are furnished to him by the statistical department of the insurance company monthly.

Q. Doesn't he study the physical plant?

A. Yes, and his engineers will go out through the country and inspect the plants equipped with the statistics furnished him by the company.

Q. In other words, in a case of that kind in Virginia, the broker would send his engineers down to Virginia to study the situation there, on a case of the kind that you speak of, is that right?

A. Yes, equipped with the statistics furnished to him by the insurance company.

[fol. 189] Q. There is no reason why the company should not furnish those same statistics to a local resident agent, is there?

A. Well, I think possibly there may be some misconception of what I am trying to prove here. We have no feeling towards the local producing agent as in comparison to the local producing broker. That is not the point I am trying to bring out. The only thought I have in this case is that the countersigning agent who merely countersigns a policy, does not perform the functions that a producing agent performs.

Q. He has not in the past, you mean?

A. He has not in the past.

Q. But he has never been compensated in the past, has he?

A. That is true.

Q. But there is no reason why he should not perform it, is there?

A. My thought is that he will not be called upon to perform it by the assured, that the assured will look to his local broker to perform those services.

Q. And there is no reason why the producing broker should not also look to the man that he is associated with in Virginia to render the local service there, is there?

A. It is purely my personal opinion that he won't.

Q. But you have had no experience of that kind, have you?

A. I do not know what will happen.

Q. There is no reason why he should not if he wants to?

A. He may. I do not believe it will be to his best interest to do it.

[fol. 190] Q. Don't you think if a New York broker has associated with him a local agent who is receiving a substantial part of the compensation in connection with the transaction, that he would feel at liberty to call on the local agent to produce such information and study as may be appropriate in the circumstances of each particular case?

A. I feel he would be at liberty to do it, but I do not feel he would have the inclination to do it.

Q. You don't mean to say that your local resident agents are incompetent to do that, do you?

A. No, I don't say that. I don't mean that as any reflection on local resident agents whatsoever. I do not believe the producing agent will delegate any powers or any work to anybody else that he can do himself. It would be pri-

marily a selfish motive. I think he would want to keep the entire servicing and handling of brokerage risks in his own control.

Q. There is no reason why he should not retain control, by merely asking his associate in Virginia to do his part, is there?

A. Except this, that he then puts in direct contact with his assured other producing units.

Q. Do you think there is some danger of the local man getting the business, under those circumstances?

A. I think so.

Q. Isn't that somewhat contrary to the ethics of the business, for a local agent to do the sort of thing you are speaking of?

A. I think it would be contrary to the ethics of the business, yes.

[fol. 191] Q. You do not mean to imply that your local agents are going to violate the ethics?

A. I do not think they ever have.

Q. I believe that there is sometimes a case where a broker changes the placing of a policy from one company to another; isn't that true?

A. That is right.

Q. And sometimes the assured changes his broker, too; isn't that correct?

A. That is right.

Q. If an assured, we will say, has a branch activity of some sort in Virginia and has established contacts with your local agent there through the broker in New York, isn't it true that the local agent of your company, we will say, could bring pressure on the local representatives of the assured in Virginia to retain that business in that same company, and in that way help the broker to retain the business instead of losing it?

A. I think that is possible.

Q. If a Virginia risk is produced by a New York broker, what branch manager's office gets credit for that, does the Virginia office or the New York office get credit?

A. The New York office, if it is placed in the New York office.

Q. Most of them are, aren't they?

A. Yes.

Q. So there is no incentive particularly in the Richmond [fol. 192] branch office on the part of the local branch man-

ager to retain that business otherwise than mere loyalty to the company, is there?

A. That is right.

Q. And he would naturally not have as much incentive to assist the broker in retaining that business as local resident agents who are receiving part of the commissions as local agents?

A. I am quite certain he would not be called upon by the broker to assist him in holding that business.

Q. But naturally it would be to the interest of the local resident agent who is getting part of the commissions to do everything he could to hold that business, wouldn't it?

A. I would think so.

Q. You spoke of these blanket policies and the fact that the loss experience was different than the experience which would happen if separate policies were written. I wish you would explain how that could possibly be if your company had half a dozen or a dozen policies which covered the identical risks one blanket policy would cover, how there could be any difference in the loss experience or loss ratio?

A. I would like to have that question reread, and my answer to it.

Q. I might have misunderstood you.

A. I can't very well understand how that could be.

Q. That is the way I understood you to testify. If that is not correct, answer the question that you do not think you stated it.

A. I do not think I so testified.

[fol. 193] Q. That is not true, is it?

A. I do not so understand it.

Q. Then, if there is no difference in the loss experience, how can you justify the giving of these big companies a smaller rate than a smaller man would have to pay, or the individual assured who might take out various policies in the company?

A. I believe that Mr. Leslie could testify to that matter better than I can.

Q. I believe you stated that this manual of instructions is distributed by the companies through brokers; is that right?

A. Brokers and agents.

Q. You testified "through brokers", but it is true that they can be just as well distributed through agents?

A. What I should have said is through producers. In all these questions and answers that I referred to brokers I really meant producers, which means brokers or agents.

Q. You say that a broker studies rate changes in various states. Where does he get that information from, as to the rates prevailing in various states?

A. From the manuals and from the instructions issued by the companies.

Q. The company then advises him as to rate changes?

A. That is right.

Q. So that there is no particular study he has to make of it, except to consult the company rate manual, is that right?

A. That is right.

[fol. 194] Q. He has nothing to do with making the rate himself?

A. No, he has not.

Q. Are you familiar with the plant and equipment of the Davenport Insurance Agency, your representative in Virginia?

A. No, I am not.

Q. One of your local resident agents?

A. No. I believe Mr. Adair can testify to that better than I could. He reports through Mr. Adair, I believe, in Richmond.

Q. In other words, your office that you are in is confined almost exclusively to what is produced here in New York?

A. That is right.

Q. And you have no knowledge of what goes on in other states?

A. That is right; only in so far as we have to call upon our local managers in those states to service risks that we may cover in those states.

Q. What sort of service do your branch managers perform there?

A. Branch managers very rarely come into contact with our assureds. We may send policies down to Richmond or send instructions to our assureds to report their claims to our offices. The main claims office is usually in the office of our branch office, which is usually supervised by our branch manager. The same goes for the inspection department, and also for the audit department.

Q. Is the only service that you request your branch office in Virginia to render on a contract that is produced through

your New York office here in New York, the mere countersigning of the policy?

[fol. 195] A. That is right. The other services that are rendered in that territory are performed by the company's salaried employees in the various departments in that territory.

Q. What services do they perform?

A. They administer the claims; they make the inspections; that is part of the routine of our inspection or our engineering department in that territory.

Q. So the company has an engineering department itself, has it?

A. That is correct.

Q. Is that engineering department and the employes in that department, at the service of the local resident agent in Virginia?

A. Yes.

Q. Do the engineers that your company employs go down through Virginia and inspect these various risks, and make such various studies as your company thinks should be made?

A. That is right. They work out of the branch offices.

Q. In other words, you have engineers who actually live in Virginia?

A. That is right.

Q. And these engineers are there at the call of the local resident agent if he desires help?

A. In addition to that, we occasionally send engineers for special jobs which we may think that they are better qualified to do, direct from the New York office. For instance, we have a very large fleet of automobiles insured for one of [fol. 196] the oil companies, and we do not allow any of the local engineering staff to handle that risk; we have it concentrated entirely in one man operating out of the home office engineering department.

Q. What does that engineer try to do when he goes there?

A. He conducts safety meetings; he contacts the various managers, production managers and service managers, of the assured; he interviews drivers and holds safety meetings.

Q. What different functions, if any, do the staffs of these brokers perform of that kind?

A. They would, in certain instances, go further than he

would go. They would supplement the work he does by further detailed studies of those accident reports.

Q. Why is that?

A. Because they believe that that service is necessary.

Q. In other words, as I understand it, the broker makes a study from the standpoint of the interests of the assured to try to reduce his insurance cost?

A. As well as for the interest of the company. As a matter of fact, the interest of the assured and the interest of the company are one. The primary purpose is to reduce the incurred losses, to reduce the accident frequency, so that the cost to the assured ultimately in premium and rate will be reduced, and they are all working towards the same end, the company, the assured, and the broker.

Q. And also the agent?

A. And the agent.

[fol. 197] Q. Then the type of study that will be made by the broker's engineer is exactly the same type that the company's engineer makes, isn't it?

A. That is right.

Q. Do you mean now in your opinion the broker's engineer is more efficient than the company's engineer, or not?

A. No. I believe this: that the broker's engineer has less work allocated to him, and therefore makes a more intensive study of the particular risk than the company's engineer does.

Q. You mean that your company's engineer is overloaded with work, and can not properly perform his duties?

A. No, I do not mean that; but he is not required to do the same job that the broker's engineer does.

Q. Isn't the company more interested than anybody else in not having more losses?

A. I think the assured, the enlightened assured today, is more interested in keeping his losses down than anybody, because if the losses increase, the company can increase its rate, but the assured is the one that finally pays the bill.

Q. Do you know of any case in Virginia in which any engineer of a broker has made any study of any policy or contract that your company has?

A. Yes. I believe that there is an instance of that.

Q. What is it?

A. It is a case of a large tobacco fleet.

Q. I believe you stated, if I understood you correctly, that [fol. 198] the brokers were unable to operate if they only

received one-half of the producer's commissions. Did you state that or not?

A. No; I stated that they would not be able, in my opinion, to operate as effectively as they do now, if they only receive half of the commission; in other words, they would not be able to maintain the organization and the overhead in their organization, to properly service these risks, if their commissions were cut in half. That seems to be obvious.

Q. Is it not also true that if the brokers co-operate in building up a spirit or a policy of associating with themselves and actually working with local resident agents, and of receiving actual assistance from the local resident agents in connection with servicing their contracts, that it would not be necessary for them to maintain such elaborate organizations as you speak of?

A. That might be possible.

Q. You have no actual experience of that?

A. I would have no knowledge of that, no.

Q. You spoke of one broker placing a large premium of over $1,000,000 in one year. What is the general type of that sort of business?

A. It is as a rule national; that is, risks national in scope, covering in many states, such as large fleets of automobiles, workmen's compensation insurance covering a number of different plants, large contracting concerns that have operations in very many states, and theatre chains, and chain store risks of various natures.

[fol. 199] Q. When contacts of that sort are made through a broker in New York, the result is that all of the local agents of your company are given the run-around, so to speak, and eliminated from any participation in those transactions; isn't that true?

A. It is true that they do not share any commission in those transactions.

Q. What do they share in?

A. They do not share in anything, to my knowledge.

Q. Has your company encouraged a practice of this kind among brokers to the detriment of the local agents, or has it discouraged it?

A. I do not believe it has either encouraged or discouraged it. It has just accepted it as a fact, as a condition.

Q. It is the same thing that has grown up due to the concentration of business and activities in a big city like New York and other large cities?

A. That is correct.

Q. I believe you stated that there was a tendency or has been in recent years, to concentrate in New York activities of this size?

A. It has been my experience that there has been a greater tendency in recent years to organize insurance departments in the home offices of large assureds to control the handling of insurance from one focal point, one central point, and to negotiate the placing of insurance nationally through that one department, that home office insurance department.

[fol. 200] Q. If the writing of one of these nationwide policies is so simplified, as you have testified, that the whole matter is almost one transaction with one broker, why is it necessary for an assured to have a large insurance staff in dealing with just one man in one transactions?

A. That is a matter that I think could be better answered by the assured. My personal opinion would be that they should not have such a large insurance staff, yet there are certain of these large assureds that have it.

Q. If they have these large staffs, it would really enable them to make local contacts with local agents throughout the country, would it not?

A. It would be possible, although the staff is located directly in the home office. That is, my experience is that such a staff would be located directly in the home office of the assured.

Q. But members of that staff could travel around the whole country and get firsthand information of local conditions affected by their coverage; isn't that true?

A. They could do that.

Q. As a matter of fact, that is really the most intelligent way to handle it, isn't it, to have firsthand information by actual contact with the events from which losses may be incurred or risks may be decreased, instead of sitting up in an office in New York and handling the whole thing through some broker?

[fol. 201] A. I think the insurance departments of a number of these large assureds do travel, or have representatives who do occasionally travel throughout the country. I have one particular instance, in which I accompanied the insurance manager of a large oil fleet in various localities throughout the South and Southwest at the time we were taking over a large workmen's compensation risk. However, at that time I was operating in co-operation with the

broker and out of the New York office of that particular assured.

Q. Then if these large companies whose business is on a tremendous national volume or scale have the members of their insurance department travel throughout the country and become conversant with local conditions, is there any reason for your notion that these same representatives should not be able to handle the matters through local resident agents in these specific states?

A. The fact is that we are dealing with a condition and not a theory, and they do not do it, to my knowledge.

Q. Is there any reason that you know of, why they should not do it?

A. The only reason I can ascribe to it is that they feel themselves that they can do it more efficiently and effectively by dealing through one local producer.

Q. Mr. Nicholls, I believe in your affidavit you spoke of a lot of contacts that these brokers here make with representatives of the companies who look after the insurance [fol. 202] for their companies—and by "companies", I mean assureds—and associate around with them in luncheon clubs, and probably entertain them at theatre parties and various other things of that kind. I believe that is correct, isn't it?

A. I didn't say anything about theatre parties, that I know of. I do know they entertain them at luncheon clubs. That is a practice in the business.

Q. Isn't it a fact that it may be true—of course, you do not know whether it is or not, but it may be true—that the reason these contracts are concentrated in that manner is on account of these friendships that are built up in that way?

A. I think partially that is true. In other words, the contact is necessary, and of course into that contact will grow certain social relations. On the other hand, the old-fashioned idea that all that a broker ever had to do was to entertain his client, is rapidly being eliminated in this modern competitive age that we are dealing in. Unless the broker today can justify to the entire management of the assured his worth, he will not be considered on that risk, in my personal opinion.

Q. Then your idea is that the broker must not only assiduously cultivate the assured's representative, but must also be competent to attend to the business?

A. To render a real service for the commission that he draws.

Q. I believe you stated that some of the brokers in New York who handle business on a large scale, have offices in [fol. 203] various cities throughout the United States. What cities in particular did you have reference to?

A. Chicago, Philadelphia, Boston, Baltimore; those are the ones that I would name offhand.

Q. Are there any in the South?

A. I assume some throughout the South. But I do know of these particular cities where brokers do have branch offices. It is reasonable to assume that if a broker specializes in a certain line of business that operates down South, he would have branch offices down there.

Q. You do not know of any that have branch offices in the South?

A. Not at the moment, no.

Q. Have any of these New York brokers ever maintained any office in Virginia, that you know of?

A. Not to my knowledge.

Q. You spoke of or mentioned the fact that in your opinion if the compensation of brokers were reduced, that they would place business with Lloyds and other companies unadmitted to Virginia. Is it not a fact that Lloyds does not even have an agent in the United States where suit can be brought against that company in this country?

A. Well, that is the statement that was made to me by a broker when I asked him what might be the result. That is purely a statement from a broker as to what he would do. For instance, they might decide to place it in a mutual company which is admitted in Virginia, and collect their commissions or remuneration from that mutual company [fol. 204] through taking a percentage of the dividend.

Q. These large insurance staffs that are maintained by the assured companies would certainly give some attention to the company that these policies were placed in, would they not?

A. Yes.

Q. And do you think they would be in favor of placing a risk of this kind with Lloyds, which is not susceptible of being sued in the United States——

Q. (Continuing) —assuming that to be a fact?

A. I would not know the reasons why they might.

Q. Do Lloyds have a lower rate of premiums than your company, for instance?

A. I believe they do, in connection with blanket bonds, but I do not know that because I am not a bond man.

Q. As a practical matter your general knowledge of the insurance business necessarily leads you to believe, does it not, that it is an advantage to an assured to be able to bring suit either in the state where the loss occurred, or in the state where the contract is produced, or both, at his election?

A. I would think so.

Q. So that merely in order for a broker to get an extra commission, do you believe that these insurance experts who represent the assured, would consent to placing a contract in any company, mutual or otherwise, that they thought was less advantageous to them than your company, or some company admitted to Virginia and licensed to do business there and be sued there?

[fol. 205] A. That is a matter that I would not be able to determine in advance, until the actual condition existed, but I do know this, that brokers in New York State at the time that the commissions were reduced, were very vociferous in stating that any further reduction in commissions would necessitate them placing large amounts of their business with mutual companies.

Q. Then you do not have a very high opinion of the service rendered by these so-called insurance organizations of the assured, do you?

A. I do not believe that they do as good a job as the particular broker, because if they did, the broker would soon find himself without any necessity for existing.

Q. But you believe that they know the difference between a mutual company and a stock company, don't they?

A. I believe so.

Q. Which type of insurance is the better for these assureds?

A. It is my opinion that the stock company is. That is obvious.

Q. Do you really believe now that these insurance organizations of these companies would, merely in order to give a larger commission to brokers, consent to place that insurance in a mutual company unless they thought they were being equally protected by that company?

A. I know of many instances here in New York where a number of brokers did place a considerable amount of business with those companies.

[fol. 206] Q. It may be in those cases, may it not, that the assureds preferred those companies in the particular contracts involved?

A. That may b , and those assureds may also have insurance departments, so far as I know.

Q. But I do not know that you have answered the particular question I asked you, and that is this: whether or not in cases of these large contracts that you speak of involving premiums running into hundreds of thousands and millions of dollars, placed by assureds who have efficient staffs of insurance experts, these experts would consent to diverting that business into any company which was less advantageous to the interests of the assured?

A. I do not think it would be a question of diverting it to a company that was less advantageous; it would be a question of the assured's insurance department or executive's personal opinion as to whether it was disadvantageous.

Q. I am assuming that in the opinion of these experts, who are supposed to know about the insurance business, that it would be less advantageous; what is your answer upon that assumption?

A. I would say that if it were less advantageous to place it in another company, the insurance department would not permit it.

Q. Then these brokers do not have control over the policies to the extent of placing them in a particular company?

A. It all depends upon the particular risk. In some instances, the broker might not be able to change the company. In another one, he might have sufficient control of his business to place it in any company that he thought was a good company for that particular assured.

[fol. 207] Q. What is the purpose of these assured companies having these insurance organizations, if they are going to leave everything up to the broker?

A. I do know that they have insurance managers, and I do know that they have insurance departments, and I do know that they have manuals and that they read manuals, and that they have a very thorough knowledge of the insurance business. Why they have it is their own affair, I assume. I do not know why.

Q. Can you personally conceive of a person with the information that you say these people have, placing the risks with a mutual company rather than your company, or another company of similar standing?

A. Can I personally conceive of it? I know of it.

Q. You do not know the reason that actuated them?

A. I know they have done it. Against my own advice they have done it. In very many instances against my strong objection they have done it.

Q. Do they consider the mutual companies as strong as the others?

A. I do not know whether they consider them as strong as the others, but the facts are that they have placed business in mutual companies against my advice.

Q. What reason did they give?

A. A matter of cost.

Q. Do the mutual companies sell for less?

A. The mutual companies return a dividend; the stock companies do not.

[fol. 208] Q. Then it is the dividend that is an inducement?

A. That is the primary incentive.

Q. That dividend is a present custom among the mutual companies, isn't it?

A. Yes.

Q. And in the cases where these insurance staffs of the assureds have insisted on a stock company, it was evidently because they believed that that was a better contract, even if it did cost more money; isn't that true?

A. That is right, that the service that they got from the stock company was superior to what they would get from the mutual company, and was not offset by the value of the dividend.

Q. And that is true in spite of all this service that these brokers render, is it?

A. That is right.

Q. In these cases where the contracts are placed with stock companies at greater cost and in spite of greater cost, isn't the reason usually that the person who is looking after the insurance business for the assured, believes that that is the best type of contract for the assured?

A. From the standpoint of the assured, it would be primarily because of the fact that he obtained the broker's services.

A. And had his insurance placed in a company that the broker recommended, having full confidence in the producer's ability to select the proper company.

Q. Then you do not think that the expert insurance staff [fol. 209] maintained by these large companies to look after their insurance which they take for their protection, exercise any great degree of independent judgment of their own?

A. No, I do not.

Q. What do you think is the purpose of these companies going to the expense of maintaining those experts in the insurance business on their staff, if they are not going to exercise any independent judgment in the placing of their risks with the casualty and surety companies?

A. I do not believe I could give you an answer to that. I do know this, that knowledge possessed by the broker is as a rule far superior to the knowledge possessed by the individuals of the insurance department of the assured, and that will be readily admitted by the members of the insurance department of the assured. In other words, they rarely question the judgment of a broker in regard to his selection of a company.

Q. Don't you think they would raise much question about the bona fides of a broker's recommendations if, on account of the fact that the amount of his commissions was being reduced, he would recommend switching into a company not admitted to do business in Virginia or into a mutual company, when he had formerly placed the business in companies that were admitted in Virginia and stock companies?

A. They might.

Q. Is it not a fact that these brokers would jeopardize their own reputation and standing for fair dealing with their [fol. 210] customers, if they embarked upon any campaign of that kind?

A. I can say this, that no broker with any degree of common sense would place an assured's risk in any company that he was not fully confident was able to perform the service and afford the facilities that he expected from that company; and to do so would naturally cause him to lose the business ultimately.

Q. Do you believe that ver[illegible]nany really successful brokers would follow a policy of that kind merely because their compensation was being reduced?

A. They have told me that they would.

Q. Do you believe it?

A. I have evidence that they have in the past.

Q. Then you do not entertain a very high opinion of the ethics of these brokers, do you?

A. I do not think it is a question of the ethics of the brokers. It is a question of their survival.

Q. What knowledge do you have as to whether or not the brokers could survive, personal knowledge, I mean, as distinguished from what is merely told you by the brokers?

A. Well, I know this, that if the present rate of commissions to the brokers that we do business with is cut in half, they would have a very serious problem confronting them in servicing these risks that they now service to the satisfaction of the assureds.

Q. You are eliminating, I believe, from your answer, any consideration of the fact that these brokers might be able to obtain a large amount of help and co-operation and assist-
[fol. 211] ance from local resident agents associated with them, and who receive part of the compensation; isn't that true?

A. That is true.

Q. What large companies that have similar standing to your company are there that are engaged in a similar business in the United States which are not qualified in Virginia or licensed in Virginia?

A. I wouldn't know the names of those companies.

Q. Do you know of any at all?

A. No.

Q. In fact there are none, are there?

A. None that I know of.

Q. It is alleged in the complaint, I believe, that in order to retain the business of these brokers—the insurance companies plaintiffs are required to and have made it a practice of paying to brokers an additional commission over what has been customary to pay heretofore. Do you have any knowledge of that?

A. No, I do not.

Q. If any such practice should be indulged in by any of your competing companies, it would amount merely to a competition between companies as to which is willing to pay brokers the most commission, would it not?

A. It would.

Q. As a matter of fact, any company can now pay a broker 25 per cent commission if they desire, instead of 20 per cent or 10 per cent, whatever the prevailing rate is?

A. Not as members of the National Bureau subscribing [fol. 212] to the acquisition field supervision cost conference. The commissions—and incidentally I believe this is a matter that Mr. Scofield should testify to—are set up in those rules, and the manner in which those rules apply. I believe he can best answer.

Q. If all of the competing companies should adhere to the rules prescribed in Plaintiffs' Exhibits 1 and 2, which have been filed, and under which the broker would receive only half of the ordinary producer's commission, then the only disadvantage which companies qualified in Virginia would be under, would be the effort on the part of the broker to divert the business into a mutual company or a company not qualified in Virginia; is that true?

A. That is correct.

Q. If all of the states should enact similar legislation, this would have the effect, would it not, of eliminating practically all of the competition except Lloyds and mutual companies, in so far as the broker might be able to divert the business from companies of the type of your company; is that true?

A. Yes, I would think so.

Q. I believe you stated that if this additional producer's commission were paid to brokers, it would have the effect of increasing the premium rate to the assured; is that correct?

A. If the acquisition cost is increased to the companies, it must, of necessity, be increased to the assured.

Q. If some of these companies are willing to engage in that practice of paying to the broker the equivalent of that half of the commission which must be retained by the Virginia resident agents then it would follow, would it not, that [fol. 213] those particular companies would have to increase their premium rates to the assured on account of the increased acquisition cost to which you have referred?

A. Yes.

Q. If that is true, I believe you also stated that a company which did have to increase its rates would be unable to compete with a company charging lower rates. That is correct, isn't it?

A. That is correct.

Q. Therefore, the net result of a practice of that kind would be that the companies following it would eventually be practically put out of business?

A. I think the entire practice would be detrimental to the business. I believe that unless this matter were handled on a uniform basis, it would create chaos in a business which we are now trying to straighten out. As a matter of fact, on this very subject I believe that if the producers and the companies could get together on a uniform law affecting this thing, that much of this trouble that this is about to create, could be eliminated, and it seems unfortunate that that has not been done before. That is my private opinion.

Q. You spoke of these blanket policies covering fleets of oil trucks, and similar risks. Is there any reason why a separate fleet policy should not be issued in each state covering the fleet in that state?

A. No, except for the matter of convenience of insuring it under one blanket contract. The assureds would natur- [fol. 214] ally prefer to have their coverage under one contract than in 48 different contracts, assuming they were operating in 48 states.

It is true that we do file the underlying policy with the Rating Boards and Industrial Commissions, whenever it is necessary to make a filing, but that is something the assured is not burdened with; in other words, we do not hand him 48 contracts for delivery; we hand him one contract with the schedules set up by states.

Q. What becomes of these underlying contracts?

A. The copies of those underlying contracts are filed with the particular department.

Q. What department? Department of what?

A. It might be the Rating Board; it might be the Industrial Commission; in other words; the New York Rating Board, for instance, if we wrote a blanket policy covering the State of New York as well as other states, the Compensation Insurance Rating Board in New York would only be interested in that part of the contract covering in the State of New York; so, therefore, we file a daily report extracting from the policy that particular portion of the coverage in the State of New York, and in that we cite the classifications, the rate, and so on, and the locations that apply to the State of New York.

Q. I suppose different states have different laws prescribing different forms of policies?

A. Where they do have that, of course we have to file a separate policy for that particular state. In other words, where the particular state requires an individual policy

[fol. 215] contract on compensation, for instance, say Pennsylvania, we issue a separate policy for the State of Pennsylvania. For other states we merely issue under compensation policies, the law endorsements affecting those particular states, and use the universal workmen's compensation policy accepted for those particular states. I believe Massachusetts also calls for a special form of compensation policy.

Q. The only inconvenience you can think of, then, that would be attendant upon having separate policies, is a little additional clerical work?

A. Yes, and a study of the changes that might be made in those policies year by year.

Q. You also spoke of some sort of a policy that was to cover any type of activity that the company might engage in in any state. This, I believe, is a type of workmen's compensation policy.

A. The blanket workmen's compensation policy.

[fol. 216] Q. And if a company that is assured under one of those policies goes into a state and undertakes the construction of a building or something of that kind in a state, I believe that policy technically covers it. Is that right?

A. In that particular case it would have to be a state in which we had entered that particular assured through the attachment to the policy of a law endorsement, and by the filing of a copy of that contract with the particular Industrial Commission; but that would enable him to do any operation in that state that was provided under the policy contract.

Q. Would the assured there have to give you notice that he was engaging in this activity in that state?

A. He would at the outset tell us the states in which he expected to do work, and any work he did in those states would be automatically covered in that policy. If he failed to notify us that he was going to do work in another particular state under this workmen's compensation policy, it would be a very serious thing for us to have him go into that state and do any work and not have so notified us.

Q. So you require notification, do you?

A. We endeavor to get notification in this particular case where he goes into a state not listed on the policy contract, but the policy contract itself covers for any coverage that may exist under any law in the United States or Canada. That is part of the workmen's compensation form.

Q. If he goes into a state of that kind and engages in an [fol. 217] activity, even though you know nothing about it, if a loss develops you think you are liable under that policy?

A. Yes; but the danger is that he subjects himself to a penalty in engaging in an operation under a policy with a company that has not filed.

Q. Suppose he starts a new activity in a state where he has already filed a copy of the policy with the Industrial Commission?

A. That is covered automatically.

Q. But you do not know anything about it. He is not required to give you any notice?

A. No. We may draw our policy to the effect that he will have to notify us, in other words, we may say in our contract "This policy covers anywhere in the State of New York or in the States of" listing a number of states.

Q. But those policies require notice, or they do not; that is what I am trying to get at.

A. In certain cases we would insist upon his giving us notice. For instance, if we were writing a particular type of policy we felt we would not give the particular notice, we would put an endorsement on the policy saying that the assured would have to give us ten days' notice of a particular job he was deciding to undertake. In other cases we would not. It all depends upon the particular individual risk.

Q. If you had a contract with a company not requiring that particular notice, how do you find out what premium he has to pay?

A. We make an audit of his books.

[fol. 218] Q. You mean you have to go to the expense of auditing that man's books?

A. Certainly. That is the way a premium is developed under a workmen's compensation policy. We do not have any other way of arriving at the premium.

Q. Does your company audit the books of every assured?

A. Every assured that we write for workmen's compensation and public liability insurance, because that is how our premium is arrived at.

Q. Does the company keep separate records of each of these jobs so that you can determine the rate on each job?

A. Does the assured?

Q. Yes.

A. Yes, they keep records of the job, and they classify

their labor according to the manual classification involved in the particular risk.

Q. Suppose a job is completed in the state and there is no loss incurred, and the company does not say anything to you about it and does not show you any records of that job, how would you get any premium on that?

A. You are touching on one of the very serious problems in our business at this minute, and there has been a considerable loss of premium volume because of that. However, the companies endeavor to maintain organizations so that they will pick up information of that character; and I can say this to you, that if an assured ever did that once the insurance carrier would immediately cancel his contract. [fol. 219] However, that is a very serious problem which has existed many years in connection with the payroll auditing in the workmen's compensation insurance business.

Q. Isn't it true that having a local agent through whom this business is handled, would be of great help in the company being advised of activities of that kind?

A. I do not think so.

Q. You mean the local agent would not know about it?

A. I do not think so.

Q. In his home town?

A. If it were going on in his home town, yes, but if it were going on in some other town I do not see how he would have knowledge of it.

Q. A man living in Virginia is generally conversant with the activities in the state.

A. In the entire state.

Q. Generally speaking.

A. I don't know.

Q. You don't know about that?

A. I know as a resident of New York City I would not know what was going on in Newark or Jersey City, and that is right across the river.

[fol. 220] Q. What are the particular services a broker renders after a contract is made?

A. He advises the assured in regard to various phases of his operations from the safety standpoint. He assists the assured in regard to the handling of his claims. He acts in various capacities as an adviser for the various insurance needs that may come up during the course of the year, new contracts that he may assume and the insurance problems

that are created by those contracts, and the effects it may have on the particular insurance he is handling.

Q. Does an agent render substantially the same service as a broker?

A. When I say broker, I mean broker in the capacity of a producer; and of course an agent is in the same capacity.

Q. They both occupy more or less of a mediating attitude between the company and the assured?

A. That is true.

Q. And their duties are to see that the contract is fairly and justly performed on both sides; is that right?

A. That is right.

Q. You spoke of some brokers, probably agents also, who specialize on a particular type of coverage. If one of these large companies which desires to be protected under a contract of surety or casualty has different types of contracts that it desires, would it likely place all of those with this specializing broker or divided among different brokers who [fol. 221] specialize in those particular types?

A. It might be placed in the position of having to go to a particular broker, because of his specialized knowledge in one particular class of business. To give an example of that, there were at one time and probably are today, although I have not any direct contact with that form of insurance, certain agents throughout the country who were specializing in a particular form of liability insurance known as amusement park liability. That business was limited to practically three or four large agents, who wrote practically all of that business through one company.

Q. My question was whether or not the assured would very likely place all of his contracts with one of these specialized brokers or just the particular contract that is covered by that broker's activities.

A. It would all depend upon the particular broker or agent. Naturally, if the broker or agent were able to effect a form of coverage such as amusement park liability, that would be hard to place elsewhere, he would endeavor, if possible, to obtain the other casualty lines and possibly the fire insurance for that particular assured. Whether the assured would agree to give him all the rest of his business would depend upon the necessity he had for the service of that particular agent or broker.

Q. These agents, that is, agents that occupy the same status of what is termed in Virginia a resident agent under

[fol. 222] the licensing law of that state, do act as brokers frequently if the companies they represent do not happen to carry the type of contract that their customer wants, don't they?

A. I would assume so.

Q. And they are in a position, either by making contracts with their own companies or procuring them through other companies, to render any service in the way of procuring a contract that any broker would render. Is that correct?

A. By and large that would be so, except in specialized forms of insurance such as I have mentioned. Malpractice insurance is usually a specialized form of insurance controlled by one or two agents or brokers.

Q. Don't you think that the agent who represented a company that issued contracts of that type in Virginia would write through another agent that brought the business to him, and be associated together in that transaction?

A. He might.

Q. Wouldn't it be helpful to your company if New York brokers would associate with them and enlist the help and service of local resident agents in Virginia or other states?

A. That is a question that I do not believe I would know the answer to. I do believe it might be objected to by the broker or agent, for instance in Virginia, if he had to have his assured brought into contact with say three or four other agents in other states, simply because that assured had operations in other states, and I believe the agent in [fol. 223] Virginia would have the same objection to that as the broker in New York. That is my own personal opinion.

Q. What objection could the agent of Virginia have to being associated with a contact that he otherwise would be eliminated from?

A. If he were the producer of a contract in Virginia and had to have his assured contacting four or five other agents in other states, I believe both he and the assured would have a serious objection to that.

Q. You mean an agent who writes coverage outside the State of Virginia?

A. That is correct.

Q. He would not want to have any associated with him to the extent of endangering loss of his business; is that so?

A. Yes. I do not believe it makes much difference to the

carrying company except that they would have to do business through three representatives instead of one.

Q. They would have a local man, though, who would be on the job when the event happens that results in a loss?

A. They would have that man as a salaried employe in their Claim Department. He would not be an agent.

Q. But does not an agent frequently help to iron out difficulties and disputes between the company and the assured?

A. Occasionally. I am assuming, however, that you are referring to cases where the accident arises and the claim is to be adjusted under the terms of the contract, and there is no dispute between the assured and the carrier. In that event the agent would not be brought into the picture at all, [fol. 224] but the salaried claim man would handle it right to conclusion.

Q. Does not the agent usually take it up with your adjuster?

A. Not as a rule. For instance, in the handling of these large accounts we notify the assured of a list of all our claim offices, and when an accident arises, instead of the accident report being sent to the agent, the accident report is sent direct to the salaried claim man in that particular locality.

Q. That is, the company does that?

A. The assured does that. The assured sends the notice of the accident to our claim office, because otherwise it would create endless delay, if, for instance, the agents were located in Virginia and the accident happened in Idaho.

Q. I am talking about the accident happening in Virginia.

A. If the accident happened in Virginia and the agents were located in New York State.

Q. I am talking about a Virginia agent who handles Virginia business. You have a lot of agents in Virginia now?

A. Yes.

Q. Don't they render any help to your company at all?

A. The help that an agent renders is incalculable, and the good will of an agent is the most valuable asset our company has. I think I am being placed in a position here of criticizing the lifeblood of our business, which is not my intention. I have a high regard for the agents.

Q. Don't the agents render service after the contract is written?

[fol. 225] A. Of course they do; that is what they are there for. They would not be good agents either to the company or to the assured if they did not.

Q. You spoke yesterday of the mutual companies and the type of contract they offer as compared with the contract of the companies like you represent. I wish you would state what you consider to be the principal advantages of your contract over the mutual contract.

A. Well, the contract of the stock company does not contain the assessment feature that a mutual contract does, and in most cases the mutual contract is negotiated direct with the assured without the services of the broker or agent, which we consider are a vital necessity to the particular assured.

Q. Are there any different provisions in the contract itself?

A. Except for the assessment feature in the mutual contract, the policies are pretty much similar. As a matter of fact, in most states, in compensation and automobile insurance the forms are pretty well prescribed by the authorities.

Q. In Virginia there is a difference between the automobile liability policy of a mutual company and that of a stock company, isn't there?

A. Other than the possibility of assessment under the mutual policy, I can not understand how there could be any material difference, because they would both have to provide similar protection.

Q. There are conditions, like requiring driving licenses [fol. 226] and things of that kind, that are contained in the mutual policies that are not contained in the others; is that correct?

A. Not to my knowledge.

Q. You are not familiar with that?

A. Not with the particular situation in Virginia; no.

Q. Does your branch of the work here in New York bring you into contact with adjusting of losses in Virginia under any contracts except what come through this branch office, or which originate in New York?

A. No; only on such contracts originating in New York.

Q. You spoke yesterday of these blanket policies where you issue to the assured one policy covering risks in a number of different states. Isn't it a fact that there are

underlying policies which are issued separately for each state?

A. That is correct.

Q. Are these underlying policies countersigned by local agents in each state?

A. They are all executed in accordance with the law of the various states. Where the policy must be countersigned in a particular state, naturally the underlying policy is sent to that state for countersignature.

Q. So that the real contract that you make with the assured consists of a blanket policy and a whole lot of underlying policies?

A. That is correct.

[fol. 227] Redirect examination.

By Mr. Christian:

Q. Yesterday, you said a general agent only represents one company, as a rule. Do you mean by that he only represents one casualty and surety company, or do you mean he usually represents only a casualty and surety company but does not represent other kinds of companies?

A. My experience with the larger general agents is that they only represent one casualty and surety company, and other fire companies.

Q. Ordinarily these casualty and surety general agents do not go in for life insurance, do they?

A. I think they do.

Q. So they probably represent a life insurance company too?

A. That is correct.

Q. You said yesterday that the service policy of a general agent would be established by him. It would be well if we could have some definition, I think, of what you mean by a service policy. Is that his attitude towards the public, or the little house organ he might get out to his customers periodically, or is it the extent to which he is gracious in his manner toward them, or what?

A. I am talking about the service policy of the agent to the assured, in differentiation of the underwriting policy of the agent to his company. The company, to a large extent, [fol. 228] controls the underwriting policy, what risks it will or will not accept, whereas he himself determines how

often he shall call on his assureds and what services he will render to those assureds.

Q. And that is the matter of salesmanship, a man selling himself?

A. That is correct.

Q. Down in your position as a branch officer, does the company determine your service policy, in the sense in which you use the term, or is your service policy there a matter of your personality?

A. My service policy is largely determined by the instructions that I get from my superior, the resident manager.

Q. Let us take the branch manager, then. Does he determine the service policy of his branch office? For instance, take Mr. MacNeil, in Richmond, or take the branch manager of whom you are the assistant, does the service policy vary in those different offices with the personality of the branch manager?

A. It might to a certain extent, but by and large it will be governed by the directions that he operates under from the company.

Q. And when you refer to service policy, exactly what things come under that terminology? I asked you whether he would get out a house organ to his customers, or whether he would call on them once a week or once a month, or just before an expiration date, and I think you said that was a part of it.

A. That is a part of it.

[fol. 229] Q. And what would be some other things: whether to send them Christmas presents or Christmas cards—would that be part of it?

A. Not that I would give consideration, no. It would be primarily the interest in the assured's business in regard to his loss ratio and the safety activities that his assured would take under his urging, and advice that he might give him to administer his affairs in such a way that he would obtain the best form of insurance.

Q. Perhaps also in an economic way. Of course, a man with a good service policy, then, would be lowering the cost of insurance all the time as far as his acts had an impact on the business, wouldn't he?

A. He would be a valuable asset to the company, the assured, and the community.

Q. In a selfish way, what would be the immediate effect of giving that service in a way acceptable to the assured?

A. From a selfish standpoint it would serve to make him more valuable to his assured, and that would have the effect of continuing him as the broker or agent on the risk when it was up for renewal.

Q. And it would have the effect, if his loyalty was to your company, of your company getting the renewal instead of another company?

A. That is correct.

Q. In answer to a question of Mr. Staples as to whether if local agents in Virginia should in future receive substantial parts of the producer's commissions, they would be [fol. 230] called on to furnish service to assureds or to New York producers of the business, I am not certain what you said. Do you know of any service for which there would be occasion to call on them in such a case?

A. I do not know of any now, because I do not think the occasion has ever arisen.

Q. But if the New York producer had to divide his commissions 50-50 with the Virginia agent, you think it is possible, as I understand, that in order to lessen the burden of that on himself, he might devise means to get something besides a countersignature out of the local agent?

A. Yes. He might conceivably call on such local agent to render service.

Q. I think you also said in answer to a question by Mr. Staples based on a hypothetical case, that if a countersigner that has to countersign a policy wanted to raise some question as to its contents, the proper course would be for him to communicate with the producer. I ask you whether in an ordinary case, in order to do that he would not have to communicate with him through the party who requested the countersignature to be furnished, or would he be able on the information before him to identify the particular party to communicate with?

A. He could do it either way. He might communicate with the home office who had given him the list of the countersignatures, that is, of persons to call upon, who would call upon him for countersignatures, or he might call upon the party direct that sent the policy for countersignature [fol. 231] if he knew who that was.

Q. Sometimes he would not know who that was?

A. In that event he would refer to the home office individual who gave him the list.

Q. And ask that party to communicate with him in this case?

A. That is correct.

Q. It often happens, however, that when business comes through a general agency, that the general agency does not even want the home office to know who was the true producer; isn't that so?

A. That is so, in certain jurisdictions where the general agent objects to giving the company the names of the individual producers who gave him the business.

Q. In other words, some general agents consider that the exact nature of the business of the subagents reporting to them, as well as the exact sources of the business they get from brokers, are their business secrets?

A. They consider that is their personal property.

Q. That knowledge?

A. Yes.

Q. I think you used the term that agents own the business, or something of that sort. What you have reference to there, I believe, includes the records of the dates of expiration of their policies, for one thing, doesn't it?

A. That is right.

Q. And any information they have as to the coverage needs of particular assureds?

[fol. 232] A. That is correct.

Q. And sources of their business?

A. That is correct.

Q. Would you think it would be correct in a legal sense if I made a contract with the F. & C. Company through a particular agent, to say that nobody except me has the right to place the renewal of that contract?

A. I would say that that is a matter which in my personal opinion, should be considered the property of the agent.

Q. But I mean to say isn't it my property if I am the assured, where I place the renewal business?

A. Yes, that is so, but my point there is that there is a relationship between the company and the agent, and if the agent leaves one company and goes to another, it is the practice in the business for the company who had his business before, not to endeavor to control that business and take it away from that particular agent simply because he goes to another company.

Q. In other words, because I as your agent, reach the parting of the ways with you, you do not try to destroy me by making a drive on my customers?

A. That is right.

Q. And that is the sense in which you mean of the companies regarding the business as going to the agent?

A. Yes.

Q. Mr. Nicholls, in this suppositious case that we were talking about where a countersigner would get a substantial part of the producer's commissions on contracts which [fol. 233] were countersigned at the request of the producers, would there ordinarily be satisfactory uniformity of excellence in the countersigners so that the true producer in discharging his duty to the assured, could feel that he could uniformly rely on those local people in matters, or would you expect to find variations among those various countersigners, so that in some cases he could not allow him to be his deputy or delegate, and in other cases he could?

A. I think that would all depend upon the particular circumstances of the case, and the type of contract he was issuing, and the particular organization of the countersigning agent or broker.

Q. It would vary in different localities?

A. It would vary in different localities, and on the calibre of the individual.

Q. And even though the individuals might not have a variation in calibre, there might be a variation in extent of the knowledge of the producer as to that calibre in different localities which would alter his judgment in saying whom he could depend on.

A. That would be true.

Q. Without reference to either this Virginia resident agency law or any other resident agency law, is it practicable for these assureds whose business is now produced in New York but covers in Virginia and other states, assuming they want to do it and think it is in their best interests to do it, to create this very condition that this law attempts to create? [fol. 234] In other words, could an assured split his business and place half of it locally if he wanted to?

A. He could do that. It would seem to me that a multiplicity of companies and agents in the casualty business, for instance, would not tend to be helpful to the assured. In other words, if he could concentrate his business in one

company through one agent or broker, it would seem to me preferable.

Q. I mean if there is anything in the present situation that these assureds ought to have and are not getting?

A. I do not believe so.

Q. I say that if there should be they could get it without having the Virginia resident agency law, by just placing some of the business through the Virginia agents; isn't that so?

A. They could do it now. That is true.

Q. About this National Conference; that is a voluntary organization, is it not?

A. That is true.

Q. And if a company wanted to get out of it and pay what acquisition costs it wanted, it could?

A. Yes. It could resign from the Conference.

Q. In answer to one of Mr. Staples' questions, I think you left the impression that if a particular company paid higher acquisition fees, of necessity that company would have to increase its premium rates? I ask you, isn't that situation susceptible of being otherwise treated than by increase of premium rates, by adding more selective underwriting or adopting a different and less liberal claim settle- [fol. 235] ment policy, or lowering the percentage of other factors going into the premium?

A. It could result in all those things, and could cause most of those conditions.

Q. But I mean you could avoid raising the premium if you would do more selective underwriting?

A. Or you could avoid raising the premium if you cut down on your service facilities to your assureds.

Q. Or if you could cut down and operate very much more economically the administrative part of your business?

A. That is right.

Q. Or if you could make more money out of the investment part of your business to offset the loss of money in your underwriting.

A. It could be accomplished in many other ways.

Q. So it is not the result of paying more commissions on the premiums that you got; is that right?

A. That is right.

Q. It would have been a more accurate answer, then, to say that paying larger commissions or having larger costs

of any sort would have a tendency to cause the premium rate to increase?

A. I can answer that by saying there are just so many pennies in the premium dollar, and if you take any out of it somebody has got to pay for them.

Q. About these insurance departments which you and Mr. Staples discussed yesterday, the impression was left in my mind from that discussion that perhaps the placing [fol. 236] of contracts was the principal function of those insurance departments that the assureds themselves maintained, and that if they were just going to place one or two or three or four blanket contracts with a broker, they could close up their desks and go to Florida for the winter. That is not the impression that you wish to leave?

A. I am surprised that impression was created. Those insurance departments are kept busy daily, otherwise they would not be maintained.

Q. And they are following up claims and adjustments, and this and that, all the time?

A. They are following up a number of duties that coincide with the duties of any other department in the company.

Q. What I am trying to get at is, would those duties be there to be done regardless of whether they placed the business through one broker or agent in New York or scattered it around the country.

A. Yes, those duties would still be there to be done.

Q. You would say that men of leading reputation in their knowledge of insurance are generally to be found in those salaried positions in those insurance departments of assureds, or are they found, like the leading lawyers, leading doctors, and leading engineers, running their own organizations with their own business?

A. I would say they are usually found among the agents and brokers running their own business.

Q. Speaking of a general agent occupying, in Mr. Staples' [fol. 237] words, a mediating attitude between the company and the assured, would that description also apply to the attitude of a branch manager between the company and the assured?

A. Not to the same extent.

Q. You do on occasion, yourself and other branch managers, mediate?

A. Yes; we do frequently come in contact with the assureds.

Don't you also frequently have brokers here call you up and ask you sometimes to make payments plainly not covered by the contract, and just put it on the matter of retaining their good will, and don't you come up here and try to get the company to pay it?

A. Yes, we do that for the sake of getting the good will of the agents or the broker.

Q. And there you distinctly act as mediator?

A. Yes.

Q. Didn't you tell me that in one case an insect bit a party on the arm and it was not covered, and you got payment for $175?

A. That is right.

Q. And that was on a more or less serious representation of the broker that that was something you had to do?

A. That was a question that the broker was confronted with as a service to the assured.

Q. And as to whether your Virginia agents render your company service after a contract is written you said "Yes, they did, and they would not be good agents if they did [fol. 238] not." Were you referring there to countersigning agents or producing agents in Virginia?

A. Producing agents.

Q. When you use that term in that connection, do you mean an agent that has contact with the assured and has the good will of the assured and with whom the assured wants to do business, or do you mean some stranger who has no contact with the assured except such contacts as may arise from having countersigned the assured's contract?

A. I mean the producing agent who has direct contact with the assured, and not the agent who merely countersigns the contract.

Q. About these underlying policies which are issued in connection with blanket policies on a nationwide coverage, there would only be a very limited number of states where underlying policies would have to be issued at all, wouldn't there?

A. That is correct.

Q. In other words, it depends upon whether the statute in the state that is applicable to that particular branch of insurance requires underlying policies?

A. It depends upon the requirements in that particular state as to the filings of that particular class of insurance.

Q. And the laws of some of the states would exclude accident and health from that group?

A. That is right.

Q. And include other lines, include fire and so on?

[fol. 239] Q. In the State of New York, for instance, it requires filing with the New York Rating Board a copy of the workmen's compensation policy, whereas it does not require it in the case of the public liability policy.

Recross examination.

By Mr. Staples:

Q. I believe you stated on redirect examination that there had never been any occasion yet for a New York broker to request any local service from a resident agent in Virginia, so far as you know. Is it not true that up to this time the New York broker has not yielded any portion of his commissions to any resident agent in Virginia which would entitle him to call upon that local resident Virginia agent for any service?

A. That is correct.

Q. With reference to the question of the ownership by a local resident agent who is compensated by commissions of the business produced and built up by him, the question was raised as to whether your company regards that business as belonging to the agent, or whether the company would be free to undertake to secure that business from the agent, in the event the agent leaves your company and goes with another competing company. I ask you whether under circumstances of that kind, your company would give to your new agent, new resident agent, the expiration dates of policies in your company which had been procured by the former agent who had left your service?

A. No.

[fol. 240] Q. Mr. Christian asked you about a case in which a broker induced your company to pay a man $175. for an insect bite, when the policy did not cover that case. You stated that this was brought about by the action of the broker, did you not?

A. That is correct.

Q. Then it is the broker who acted as a mediator between the assured and your company, and the broker is the man who really accomplished it, isn't that correct?

A. The broker took it up with me, and I took it up with our Claim Department, and between us we accomplished the result.

Q. But so far as the assured was concerned, the only man who was contacted was the broker?

A. That is right.

Q. And the broker occupied a similar status to that of the resident agent in Virginia?

A. That is right.

Q. Your branch office in New York is occupied exclusively in the business of producing contracts through brokers and resident agents in New York, isn't it?

A. We have on occasion had business sent in to us through brokers in other states, through another agent in New York.

Q. A large part of your business which you originate through your office consists of coverage in states other than New York, does it not?

A. That is correct. It does.

Q. And naturally, then, you would be disposed to look with favor upon the practice of having this out-of-state [fol. 241] coverage originate in New York through your office, wouldn't you?

A. That is right.

Redirect examination.

By Mr. Christian:

Q. I believe you said that in the insect bite case the broker there occupied the same status as a resident agent in Virginia. Do you mean in respect of the incident that he was a producer just like a resident agent in Virginia would be a producer if he produced the business; or do you mean that the broker has the same relation within your company as the resident agent in Virginia?

A. The broker would have the same relation in that particular case as a producing agent in Virginia, whether he were in Virginia or in New York.

Q. If he had been a producer?

A. That is right.

[fol. 242] JOHN J. MCNAMARA, being duly sworn, testified as follows:

Direct examination.

By Mr. Christian:

Q. Will you please state your present business connection and your duties in that position?

A. Assistant Superintendent of Agencies.

Q. What company?

A. The Fidelity & Casualty Company.

Q. How long have you been in that position?

A. Twelve years.

Q. Is there any variation in the contents of this form, Plaintiffs' Exhibit No. 3, as a rule when the agent is to be a general agent, from what it is or would be when he is to be a local or regional agent?

A. No difference, except as to commission rates. We use the same standard form. We do not have any special forms.

Q. What arrangement or instrument, if any, is the matter covered whereby the general agent is to assist and supervise subagents working under him? Is that a mere matter of general understanding, or would you say that no such understanding exists, or is there a written contract on the subject?

A. I should say it is a matter of general understanding.

Q. Is it business custom too, in the business?

A. Yes.

[fol. 243] Because if a man is a general agent he generally has subproducers.

Q. Does he always get an overriding commission on what his subproducers produce?

A. He would be expected to, under the acquisition cost rules.

Q. He does not always?

A. No. He should be or would be expected to do it.

Q. What form of agreement is made with the branch manager who contracts to perform the duties as such for the company?

A. No written agreement at all.

Q. The verbal agreement would, I imagine, stipulate his salary, would it not?

A. It does.

Q. Does it define his duties?

A. We have what is known as branch office rules and regulations, and they cover the operation of the branch offices.

Q. And they are uniform and are varied from time to time as experience develops and need for change arises?

A. Sure.

Mr. Christian: It is stipulated that in 1937 The Fidelity & Casualty Company had eighty-seven persons licensed as agents in Virginia, of whom one was its resident branch manager, Mr. Lewis C. Adair, one was a salaried special agent under Mr. Adair, giving all of his time to the company, one was such an agent giving fifty-five per cent, of his time to the company, and another was such an agent giving fifty per cent, of his time to the company. The others were commission agents, four of which were general agents and seventy-nine of which were other agents.

There was one of the general agents in each of Richmond, Norfolk, Roanoke and Suffolk; and in Richmond there were eighteen of the other agents, in Norfolk five; in Lynchburg, four; and in other localities, *fifty-two*.

The company had substantially the same agency set-up then as now, except that under the 1938 Virginia Act the salaried ones are registered and licensed as special agents, and company representatives, and the remaining eighty-three as resident agents.

Mr. Staples: That is agreeable.

Witness identified as nationally in current use by his company, the following forms:

Automatic Schedule Fidelity Bond—Ex. 4; Glass Policy—Ex. 5; National Standard Automobile Liability Policy—Ex. 6; Maximum Benefit Accident Policy—Ex. 7.

70640

BRANCH OFFICE COPY

The Fidelity and Casualty Company of New York

THIS FORM WOULD BE COUNTER-SIGNED BY A RESIDENT AGENT IN EACH STATE WHERE THERE IS A RESIDENT AGENCY LAW SO REQUIRING

COUNTERSIGNING ENDORSEMENT

Date: 19

is hereby understood and agreed that the schedule of this policy contains a premium of $ .....for insurance in the State of.....

This endorsement forms a part of Policy No.

Issued to

Countersigned by

B M Culver
President

.....
Authorized Representative.

BRANCH OFFICE GENERAL AGENT ..... AGENT OR BROKER .....

(ADDRESS)

L630B. 40M. ★ 78001-88000 (39034842)

243-a

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PLAINTIFFS' EXHIBIT 4

No. 1767884

The Fidelity and Casualty Company of New York

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK, hereinafter called the Company, does hereby agree to indemnify "those designated as insured. in joint insured rider at ached he eto as a part hereof."

of Harrison, New , hereinafter called the Employer, against the loss of any money or other personal property (including that for which the Employer is responsible) through any dishonest, fraudulent, or criminal act or omission of any Employee named in or added to the schedule hereto attached as hereinafter provided, whether committed or omitted directly or in connivance with others, while such Employee holds any position anywhere in the service of the Employer; committed or omitted, if such Employee be named in said schedule, after noon of the 1st day of March, 19 28, or if added thereto, after noon of the effective date of such addition, and discovered by the Employer before the expiration of three (3) years from the termination of such suretyship.

The foregoing agreement is subject to the following conditions:

1. The total liability of the Company on account of any one Employee shall in no event exceed the highest figure at any time in effect in the said schedule as to such Employee. The Employer may at any time remove from the schedule the name of any Employee or add thereto the name of any Employee, or increase or decrease the amount of security in the case of any Employee, by giving written notice of such change to the Company; but, except as hereinafter provided, the Company shall not be bound as to such addition or increase until the Employer shall have received the Company's written acknowledgment thereof. If the Employer takes into his service, transfers, or promotes a person assigned, temporarily or otherwise, to a position of the same name and scope as one filled by an Employee already covered under this bond, the Employer shall be deemed within the terms of this bond to have added to the schedule the name of such Employee as of the date of such employment, transfer, or promotion, and to have received from the Company a written acknowledgment of notice of such addition; provided that the Company's liability for any Employee so constructively added shall not exceed the highest amount for which the position occupied by such Employee is already named in the schedule, and provided that the Company's liability as to such Employee shall terminate at the end of two (2) months from the effective date of such constructive addition unless such addition shall have been made actual by written notice and acknowledgment as provided above.

2. Upon the discovery by the Employer of any dishonest, fraudulent, or criminal act or omission on the part of any Employee covered hereunder, the Employer shall give written notice thereof to the Company at its home office as soon as practicable after such discovery. Affirmative proof of loss under oath, together with full particulars of such loss, shall be filed with the Company at its home office within three (3) months after such discovery, and such loss shall be verified and paid by the Company within forty (40) days thereafter.

3. If the Employer or the Company shall make any recovery (excluding recoveries from other insurance and reinsurance) on account of any loss hereunder, such recovery shall first be applied to reimburse the Employer fully as to such loss; and the remainder (if any) of any such recovery shall then be applied toward the reduction of the Company's loss.

hereby agree to indemnify "those designated as insured in Joint Insured Rider attached hereto as a part hereof."

of Harrison Road, hereinafter called the Employer, against the loss of any money or other personal property (including that for which the Employer is responsible) through any dishonest, fraudulent, or criminal act or omission of any Employee named in or added to the schedule hereto attached as hereinafter provided, whether committed or omitted directly or in connivance with others, while such Employee holds any position anywhere in the service of the Employer; committed or omitted, if such Employee be named in said schedule, after noon of the 1st day of March, 19 28, or if added thereto, after noon of the effective date of such addition, and discovered by the Employer before the expiration of three (3) years from the termination of such suretyship.

The foregoing agreement is subject to the following conditions:

1. The total liability of the Company on account of any one Employee shall in no event exceed the highest figure at any time in effect in the said schedule as to such Employee. The Employer may at any time remove from the schedule the name of any Employee or add thereto the name of any Employee, or increase or decrease the amount of security in the case of any Employee, by giving written notice of such change to the Company; but, except as hereinafter provided, the Company shall not be bound as to such addition or increase until the Employer shall have received the Company's written acknowledgment thereof. If the Employer takes into his service, transfers, or promotes a person assigned, temporarily or otherwise, to a position of the same name and scope as one filled by an Employee already covered under this bond, the Employer shall be deemed within the terms of this bond to have added to the schedule the name of such Employee as of the date of such employment, transfer, or promotion, and to have received from the Company a written acknowledgment of notice of such addition; provided that the Company's liability for any Employee so constructively added shall not exceed the highest amount for which the position occupied by such Employee is already named in the schedule, and provided that the Company's liability as to such Employee shall terminate at the end of two (2) months from the effective date of such constructive addition unless such addition shall have been made actual by written notice and acknowledgment as provided above.

2. Upon the discovery by the Employer of any dishonest, fraudulent, or criminal act or omission on the part of any Employee covered hereunder, the Employer shall give written notice thereof to the Company at its home office as soon as practicable after such discovery. Affirmative proof of loss under oath, together with full particulars of such loss, shall be filed with the Company at its home office within three (3) months after such discovery, and such loss shall be verified and paid by the Company within forty (40) days thereafter.

3. If the Employer or the Company shall make any recovery (excluding recoveries from other insurance and reinsurance) on account of any loss hereunder, such recovery shall first be applied to reimburse the Employer fully as to such loss; and the remainder (if any) of any such recovery shall then be applied toward the reduction of the Company's loss.

4. This bond shall terminate:

(a) As to any Employee upon discovery by the Employer of any dishonest act on the part of the Employee.

(b) As to any Employee upon the death or retirement of the Employee from the service of the Employer.

(c) As to any or all of the Employees thirty days after written notice has been served by the Company upon the Employer or sent by registered mail to the Employer at the address hereinbefore stated.

(d) As to any or all of the Employees by the Employer giving written notice to the Company.

The Company shall refund the pro rata unearned premium applicable to any suretyship terminated as herein provided if no claim has been paid thereunder.

IN WITNESS WHEREOF, the Company has caused this bond to be signed by its president and secretary; but this bond shall not be binding upon the Company unless it shall be countersigned by a duly authorized representative of the Company.

H. E. Remington
Secretary

B. M. Culver
President

Countersigned by _____
Attorney

Bond 1710, 4M
(3907187P)

(AUTOMATIC SCHEDULE FIDELITY BOND)

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CHAS. L. NEWMILLER
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— Secretaries

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HAROLD T. WHITE
WILLIS D. WOOD

The Fidelity and Casualty Company of New York

HOME OFFICE, NEW YORK, N. Y.

Automatic Schedule Fidelity Bond

No. _____

Employer: _____

Address: _____

_____

Amount of bond: $_____

Premium: $_____

Date of bond: _____, 19__

Bond 1722, 4M
(35071079)

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Endorsement

The Fidelity and Casualty Company of New York

Bonding Department

SUPERSEDING OUR OWN PRIOR BOND—ATTACHABLE TO UNSTANDARDIZED FIDELITY FORMS OTHER THAN 627 AND 628.

FORM 791F

Date: March 1st, , 1938

This endorsement forms a part of Bond No. 1767864 , issued to "those designated as Insured in Joint Insured Rider attached hereto as a part hereof."

This Bond is issued as a continuation of a bond or bonds (hereinafter called the Prior Bond), heretofore issued by the Company in favor of the Employer, as follows:

Bond #6473, X.Y.Z.Company, Inc. et al 3/1/38.

In order that the change from the Prior Bond to this bond may not impair the Employer's interests, it is agreed that this bond shall be construed to cover every loss within the period of the Prior Bond that would have been recoverable under the Prior Bond had the Prior Bond continued in force.

PROVIDED:

1. That such loss is not recoverable under the Prior Bond solely by reason of the expiration of the term within which claim may be made under the terms of the Prior Bond;

2. That such loss would be within the provisions of this bond had the loss occurred during the currency thereof;

3. That nothing herein contained shall be construed to render the Company liable under this Bond for a larger amount on account of any loss or losses under the Prior Bond than would have been recoverable thereunder had it continued in force, or to increase the time for discovering or making claim for loss under the Prior Bond beyond the time limited therein, had it continued in force; and nothing herein contained shall be construed to render the Company liable under this Bond for a larger amount on account of any loss or losses under the Prior Bond, than the amount carried under this Bond, at the time it becomes effective, on the Employee causing such loss or losses.

4. That the aggregate liability of the Company on account of any loss or losses, whether sustained within the term of the Prior Bond or within the term of this Bond, or partly within the term of each, shall in no event exceed the amount carried under this Bond on the Employee causing such loss or losses.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

Secretary

Accepted and agreed to

_____

Endorsement

The Fidelity and Casualty Company of New York

Bonding Department

Form 792 F.

JOINT INSURED RIDER

(Attachable to *Individual, Name or Position Schedule Bonds* when written for two or more as the Insured)

This rider forms a part of Schedule Bond No. 1767854, executed by The Fidelity and Casualty Company of New York (hereinafter called Company), dated the 1st day of March, 1938, in favor of "those hereinafter designated as Insured."

In consideration of the premium charged for the attached bond it is understood and agreed, anything in the attached bond to the contrary notwithstanding, as follows:

1. That from and after the time this rider becomes effective the Insured under the attached bond are

X.Y.Z. Company, Inc.
Affiliated & Allied Subsidiaries

2. That notice terminating the attached bond as an entirety, or as to any or all of those designated as Insured or as to any Employee shall be given as provided therein either by the Insured first named in the paragraph hereof numbered 1 or by the Company to the Insured first named in the paragraph numbered 1 hereof, as the case may be.

3. That the attached bond shall be terminated as to any Employee immediately upon discovery by any Insured of any fraudulent or dishonest act on the part of such Employee.

4. That the Insured first named in the paragraph hereof numbered 1 shall, in accordance with the provisions of the attached bond and within the time therein specified after any Employer shall learn of any fraudulent or dishonest act on the part of any Employee, give notice to, and file a statement of claim with, the Company, bring legal proceedings for its own account or as trustee for any Insured sustaining any loss, make adjustments and settlements on account of any loss and receive payment therefor in its own name, and any payment so made to the Insured first named in the paragraph hereof numbered 1 shall fully release the Company on account of the loss so paid.

5. That regardless of the number of years the attached bond shall continue in force and of the number of premiums which shall be payable or paid, the Company shall not be liable under the attached bond on account of any Employee, whether to one or more of those covered under the attached bond as Insured, including those designated above and those heretofore and those hereafter covered as Insured, for more in the aggregate than the amount specified in the attached bond, as the limit of the Company's liability for such Employee.

6. That the Company may, at the request of, or with the consent of, the Insured first named in the paragraph hereof numbered 1, add to the list of those designated as Insured, increase or decrease any of the amounts carried under the attached bond, issue any rider or riders to form a part thereof and/or cancel or annul any of the riders attached or to be attached thereto.

7. That if the attached bond be terminated [illegible]

bond are

X.Y.Z. Company, Inc.
Affiliated & Allied Subsidiaries

2. That notice terminating the attached bond as an entirety, or as to any or all of those designated as Insured or as to any Employee shall be given as provided therein either by the Insured first named in the paragraph hereof numbered 1 or by the Company to the Insured first named in the paragraph numbered 1 hereof, as the case may be.

3. That the attached bond shall be terminated as to any Employee immediately upon discovery by any Insured of any fraudulent or dishonest act on the part of such Employee.

4. That the Insured first named in the paragraph hereof numbered 1 shall, in accordance with the provisions of the attached bond and within the time therein specified after any Employer shall learn of any fraudulent or dishonest act on the part of any Employee, give notice to, and file a statement of claim with, the Company, bring legal proceedings for its own account or as trustee for any Insured sustaining any loss, make adjustments and settlements on account of any loss and receive payment therefor in its own name, and any payment so made to the Insured first named in the paragraph hereof numbered 1 shall fully release the Company on account of the loss so paid.

5. That regardless of the number of years the attached bond shall continue in force and of the number of premiums which shall be payable or paid, the Company shall not be liable under the attached bond on account of any Employee, whether to one or more of those covered under the attached bond as Insured, including those designated above and those heretofore and those hereafter covered as Insured, for more in the aggregate than the amount specified in the attached bond, as the limit of the Company's liability for such Employee.

6. That the Company may, at the request of, or with the consent of, the Insured first named in the paragraph hereof numbered 1, add to the list of those designated as Insured, increase or decrease any of the amounts carried under the attached bond, issue any rider or riders to form a part thereof and/or cancel or annul any of the riders attached or to be attached thereto.

7. That if the attached bond be terminated as an entirety as herein provided, or in any other manner, there shall be no liability under the attached bond on account of any loss unless discovered and reported to the Company before the expiration of the period that is stipulated in the attached bond for discovery and report of loss sustained prior to such termination, and that if prior to the termination of the attached bond as an entirety, the attached bond be terminated as herein provided, as to any Employee, or be terminated as to any Insured as herein provided or in any other manner, there shall be no liability under the attached bond on account of any loss caused by such Employee or sustained by such Employer unless discovered and reported to the Company before the expiration of an equal period following such termination as to such Employee or as to such Insured, as the case may be.

8. That the attached bond shall be subject to all its agreements, limitations and conditions except as modified in, or in accordance with, this rider.

9. That this rider shall be effective on and after the 1st day of March, 19 38.

Signed, sealed and dated this 1st day of August, 19 38.

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

By ..... John Doe ..... Attorney

Accepted and Agreed to:

.....

By ..... Title

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Bond 3147 10m ★ (37019121)

Sheet No._____

The Fidelity and Casualty Company of New York

Bonding Department

SCHEDULE OF EMPLOYEES

Forming part of Schedule Bond No. 1767854 Dated March 1st, 1938

Bond. 1331A. 10M. ★ (1810567)

Name of Employer X.Y.Z. Company, Inc. et al

NAME	POSITION	WHERE EMPLOYED	AMOUNT OF SECURITY	PREMIUM
Brackea, Alfred	Bookkeeper	Harrison, N.J.	$ 5,000.	$ 20 00
Jones, Foster L.	Agent-Manager	Cedartown, Ga.	20,000.	30 00
Knoth, Michael C.	Office Manager & Cashier	San Francisco, Cal.	20,000.	80 00
Meyers, William H.	Accountant	Harrison, N.J.	5,000.	20 00
O'Neill, Nora	Bookkeeper	Seattle, Wash.	10,000.	40 00
Riley, Nellie C.	Cashier	Chicago, Ill.	10,000.	40 00
Vetter, Albert V.	Secretary	Harrison, N.J.	5,000.	20 00
		Total	$75,000.	$300 00

SPECIFIC INSURANCE IF ANY	NUMBER OF PLATES	HEIGHT IN INCHES	WIDTH IN INCHES	DESCRIPTION OF GLASS, LETTERING, ORNAMENTATION, AND SETTING	PREMISES-WHERE GLASS IS LOCATED (STREET, NUMBER, TOWN, AND STATE)	CODE	BOOK PREMIUM	BOOK PLUS OR LESS DIFFERENTIAL
				PHILADELPHIA,	PENNSYLVANIA			
	3	93	107	Fronts				97 12
	1	84	107	Front				17 60
	6	42	107	Fronts				42 48
	2	40½	107	Fronts				14 16
	1	29	63	Door				2 78
	51	12	24	Uppers-D.S.				14 28
	102	12	12	Uppers-D.S.				12 24
	2	38½	46	Doors in Factory				4 52
								195 10
				195.10 - 42½% = 61.94 - 154.85				
				BROOKLYN,	NEW YORK			
	6	32	29	Fronts				7 56
	1	28	63	Door				2 40
	1	72	32	Head Light				3 42
	1	72	72	Face of Building				8 28
	1	28	27	Transom-Florentine				1 04
	1	102	61	Face of Building				9 84
								32 56
				32.84 x .4025 - 13.22 - 33.06				
				CHICAGO, COOK,	ILLINOIS			
	1	94	56	Front				7 52
	4	94	100	Fronts			70.56	
	1	94	132	Front			23.27	
	2	94	132	Side Fronts			46.54	
	2	66	22	Doors with 1½" Bevel				4 20
	3	32	19	Transom Panels				2 40
	1	30	50	Front Upper-D.S.				2 17
	4	36	44	Front Uppers-D.S.				9 16
	4	30	42	Front Uppers-D.S.				7 28
	2	32	60	Front Uppers-D.S.				5 56
	4	32	60	Side Front Uppers-				11 12
				40.81 - 85% = 25.40 - 56.01				
				140.37 - 45% = 77.20 -193.00				
					249.01			249.01
				DETROIT,	MICHIGAN			
	2	73	35½	Alley Front				9 04
	2	34	34	Alley Lite				3 34
	1	73	46	Front				5 16
	1	73	46	Front				5 16
	1	73	46	Front				5 16
	1	73	46	Front				5 16
	1	73	46	Front				5 16
	1	73	46	Front				5 16

				BROOKLYN, NEW YORK						
	6	32	29	Fronts					7	86
	1	25	63	Door					2	40
	1	72	32	Head Light					3	42
	1	72	72	Face of Building					5	28
	1	28	27	Transom-Florentine					1	04
	1	102	61	Face of Building					9	84
									32	86
				32.86 x .4025 - 13.22 - 33.06						
				CHICAGO, COOK, ILLINOIS						
	1	94	84	Front					7	92
	4	94	100	Fronts				70.56		
	1	94	132	Front				23.27		
	2	94	132	Side Fronts				46.54		
	2	66	22	Doors with 1½" Bevel					4	20
	3	32	19	Transom Panels					2	40
	1	30	80	Front Upper-D.S.					2	17
	4	36	44	Front Uppers-D.S.					9	16
	4	30	42	Front Uppers-D.S.					7	28
	2	32	60	Front Uppers-D.S.					5	56
	4	32	60	Side Front Uppers-					11	12
				49.81 - 55% = 22.41 - 56.01						
				140.37 - 45% = 77.20 -193.00						
							249.01			
									249	.01
				DETROIT, MICHIGAN						
	2	73	39½	Alley Front					9	06
	2	34	34	Alley Lite					3	34
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	1	73	46	Front					5	16
	2	66	7	Side Lites					1	25
	1	60	28	Door					2	45
	1	60	28	Door-Vestibule						82
	3	18	36	Imperial Uppers-Over Door					2	45
	6	18	44	Imperial Uppers-Over Door					6	30
	2	26	7	Imperial Uppers-Over Door						36
	1	26	36	Imperial Upper-Over Door					1	36
				58.31 - 50% = 29.15 - 72.87					58	.31

DESCRIBING INSURANCE IF ANY	NUMBER OF PLATES	WIDTH IN INCHES	HEIGHT IN INCHES	DESCRIPTION- OBSERVATIONS, AND SETTING	(STREET, NUMBER, TOWN, AND STATE)	CODE	PREMIUM	PLUS OR LESS DIFFERENTIAL
				South Bend, Indiana				
	2	70	28	Doors				5 66
	2	40	28	Vestibule Doors				1 00
	4	54	28	Doors-Revolving				5 12
	4	54	22	Bent Plates-Foyer				3 16
	2	60	48	Plates-Foyer				2 96
	2	70	24	Doors-Foyer				1 66
	2	100	64	Plates-Foyer				6 64
	1	64	24	Transom-Foyer				78
	2	70	28	Plate Doors- old Stippled				5 66
				38.49 - 66 2/3% =	12.83 - 32.07			32. 17

EXHIBIT 5

GLASS POLICY

The Fidelity and Casualty Company of New York

"America Fore" Insurance and Indemnity Group

(A Stock Company hereinafter called the Company)

Duplicate Copy

No PG 21206

No of Preceding Policy _____

In consideration of the premium, and subject to the conditions hereinafter contained,

Agrees to Indemnify *the Assured, named herein, against loss or damage, by accidental breakage (except by fire), while this policy is in force, of the glass covered hereunder, including lettering and ornamentation on such glass only when the lettering and ornamentation are specifically described in the following*

Schedule

1. Name of Assured W X Y Z

2. Address of Assured 80 Maiden Lane, New York City

4. The premium is $541.85 payable $ 541.85 in advance, $ - - - - on 1st anniversary, and $ - - - - - on 2nd anniversary.

5. The POLICY PERIOD shall be from January 1, 1938 to January 1st, 1941 at 12 o'clock noon, standard time at the location of the premises as to each of said dates.

6. The glass covered hereunder is described below. Unless specifically described as such hereunder, this policy does not cover lettering or ornamentation, or clamped-, glued-, bent-, wired-, leaded-, or cathedral-glass, or door-glass, mirrors, or show-case glass, or glass not set in frames, sashes, or bars, or any glass other than fully-glazed plain-plate-flat glass.

Number of Plates	Height in Inches	Width in Inches	Description of Glass, Lettering, Ornamentation, and Setting	Premises Where Glass is Located (Street, Number, Town, and State)

HOME OFFICE COPY

THIS FORM WOULD BE COUNTER-SIGNED BY A RESIDENT AGENT IN EACH STATE

The Fidelity and Casualty Company of New York

COUNTERSIGNING ENDORSEMENT

70636

4. The premium is $ 241.00 payable $ 241.00 in advance, $ - - - on 1st anniversary, and $ - - - - on 2nd anniversary.

5. The POLICY PERIOD shall be from January 1, 1938 to January 1st, 1941 at 12 o'clock noon, standard time at the location of the premises as to each of said dates.

6. The glass covered hereunder is described below. Unless specifically described as such hereunder, this policy does not cover lettering or ornamentation, or clamped-, glued-, bent-, wired-, leaded-, or cathedral-glass, or door-glass, mirrors, or show-case glass, or glass not set in frames, sashes, or bars, or any glass other than fully-glazed plain-plate flat glass.

NUMBER OF PLATES	HEIGHT IN INCHES	WIDTH IN INCHES	DESCRIPTION OF GLASS, LETTERING, ORNAMENTATION, AND SETTING	PREMISES WHERE GLASS IS LOCATED (STREET, NUMBER, TOWN, AND STATE)

HOME OFFICE COPY

THIS FORM WOULD BE COUNTER-SIGNED BY A RESIDENT AGENT IN EACH STATE WHERE THERE IS A RESIDENT AGENCY LAW SO REQUIRING

The Fidelity and Casualty Company of New York

70636

COUNTERSIGNING ENDORSEMENT

Date: 19

It is hereby understood and agreed that the schedule of this policy contains a premium of $ ..... for insurance in the State of .....

This endorsement forms a part of Policy No.

issued to

Countersigned by

B M Culver

President

Authorized Representative.

BRANCH OFFICE

GENERAL AGENT

AGENT OR BROKER

(ADDRESS)

L630B. 40M. ★ 78001-88000 (39034842)

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THE FOREGOING AGREEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

LIMITS OF INDEMNITY PAYMENT AND REPLACEMENT A. The Company's liability is limited to the true value of the insured glass lettering and ornamentation at the time of the breakage not exceeding the amount of any specific insurance thereon. The Company may replace, without unnecessary delay, any broken glass and lettering and ornamentation thereon insured hereunder, or pay for the loss in money within the foregoing limitation, as the Company may elect. In either case the broken glass shall be the property of the Company. Whenever necessary, the Assured, at his own expense, shall remove and replace any fixtures or other obstructions to the replacement of the glass.

NOTICE OF BREAKAGE B. Immediate written notice of any loss covered hereby, with full particulars so far as determinable, shall be given to the Company at its home office or to a duly authorized agent of the Company, and the Assured shall make all reasonable efforts to preserve the glass and to prevent further damage. The Company may require the Assured to file affirmative proof of loss with full particulars, under oath, on forms provided by the Company.

EXCLUSIONS C. The Company shall not be liable for any loss or damage occurring before the glass is completely glazed in a workmanlike manner; nor for any loss or damage caused by, or resulting from fire, whether in the premises described in the Schedule or elsewhere.

REINSTATEMENT D. Upon replacement of any glass or lettering or ornamentation, or payment therefor by the Company, the insurance hereunder shall continue automatically on the new glass, lettering and ornamentation without additional premium for the unexpired term.

OTHER INSURANCE E. If the Assured or other interested party carries insurance other than the insurance under this policy against a loss covered by this policy, the Company shall not be liable for a greater proportion of any such loss than the amount applicable hereunder bears to the total amount of all valid and collectible insurance covering such loss.

SUSPENSION F. The Company shall be permitted, at all reasonable times, to inspect the premises and the glass described in the Schedule; and any representative of the Company may suspend the insurance as respects the entire risk, or as respects any part thereof, by written notice delivered or mailed to the Assured at the address given in the Schedule.

CANCELATION G. Without prejudice to the rights of the Assured as respects anything that may occur during the period that the policy is in force, the Company may cancel this policy at any time (with or without tender of unearned premium) by mailing a cancelation notice to the Assured at the address given herein at least five days prior to the date that the cancelation takes effect, or by delivering to the Assured a cancelation notice at least five days prior to the said effective date. The Assured may cancel this policy by like notice to the Company or by surrender of the policy. If canceled by the Company, the Company shall be entitled to the earned premium, pro rata, when determined. If canceled by the Assured, the Company shall be entitled to the earned premium calculated on the basis of the short-rate table set forth hereon. The Company's check delivered to the Assured, or sent by mail to the Assured at the address given herein, shall be a sufficient tender of any unearned premium.

SPECIAL STATUTES H. No suit shall be brought under this policy until three months after the loss occurs, nor at all unless begun within two years from such date. If any limitation of time for notice of loss or damage, or for any legal proceeding herein contained, is shorter than that permitted by any specific statutory provision in relation thereto, in force in the state in which the premises of the Insured, as herein described, are located, the shortest limitation of time permitted by the law of such state shall govern and supersede the limitation provided by the policy.

SUBROGATION I. The Company shall be subrogated in case of loss covered hereunder, to the extent of such loss, to all the Assured's rights of recovery therefor against persons, corporations, associations, or estates.

ASSIGNMENT J. No assignment of interest under this policy shall bind the Company unless its consent is endorsed hereon. If the death, insolvency, or bankruptcy of the Assured shall occur during the policy period, the insurance under this policy during the remaining unexpired portion of such period shall continue in favor of the legal representatives of the Assured, provided written notice shall be given the Company within thirty days after the date of such death, insolvency, or bankruptcy.

CHANGES K. No provision or condition of this policy shall be waived or altered except by endorsement attached hereto, signed by the President, or a Vice-President, of the Company; nor shall notice to any agent, or knowledge possessed by any agent or by any other person, be held to effect a waiver or change in any part of this policy.

In Witness Whereof the Company has caused this policy to be signed by its President and its Secretary, but the policy shall not be binding upon the Company unless countersigned by a duly authorized representative of the Company.

OTHER INSURANCE E. If the Assured or other interested party carries insurance other than the insurance under this policy against a loss covered by this policy, the Company shall not be liable for a greater proportion of any such loss than the amount applicable hereunder bears to the total amount of all valid and collectible insurance covering such loss.

SUSPENSION F. The Company shall be permitted, at all reasonable times, to inspect the premises and the glass described in the Schedule; and any representative of the Company may suspend the insurance as respects the entire risk, or as respects any part thereof, by written notice delivered or mailed to the Assured at the address given in the Schedule.

CANCELATION G. Without prejudice to the rights of the Assured as respects anything that may occur during the period that the policy is in force, the Company may cancel this policy at any time (with or without tender of unearned premium) by mailing a cancelation notice to the Assured at the address given herein at least five days prior to the date that the cancelation takes effect, or by delivering to the Assured a cancelation notice at least five days prior to the said effective date. The Assured may cancel this policy by like notice to the Company or by surrender of the policy. If canceled by the Company, the Company shall be entitled to the earned premium, pro rata, when determined. If canceled by the Assured, the Company shall be entitled to the earned premiums calculated on the basis of the short-rate table set forth hereon. The Company's check delivered to the Assured, or sent by mail to the Assured at the address given herein, shall be a sufficient tender of any unearned premium.

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In Witness Thereof the Company has caused this policy to be signed by its President and its Secretary, but the policy shall not be binding upon the Company unless countersigned by a duly authorized representative of the Company.

H. H. Remington
Secretary

B. M. Culver
President

DUPLICATE COPY

(Space for Attachment of Endorsements)

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OFFICERS

BERNARD M. CULVER, President
FRANK A. CHRISTENSEN, Vice President

Vice Presidents:
HALB ANDERSON
CHAS. L. NEWMILLER
CHANNING B. CORNELL
RAYMOND N. CAVERLY
MARTIN J. O'BRIEN

Secretaries:
E. LAMM, JR.
FRANK E. O'BRIEN
WM. L. BATES
HAROLD K. REMINGTON

CHAS. E. SWAN, Treasurer

Assistant Secretaries:
CORNELIUS O'LEARY, JR.
WM. P. HARVEY
LEWIS A. NICHOLAS
GEORGE A. BOYD

WM. H. EMES, Comptroller

DIRECTORS

FRANK A. CHRISTENSEN
BERNARD M. CULVER
EDWARD C. DELAFIELD
GAYER G. DOMINICK
WADE FETZER
ROBERT J. HILLAS
BENJAMIN R. C. LOW
ETHELBERT I. LOW
HALL PARK MCCULLOUGH
R. STUYVESANT PIERREPONT
AUGUSTE G. PRATT
PHILIP J. ROOSEVELT
CHAS. E. SWAN
WILLIS D. WOOD

Glass Policy

DUPLICATE COPY

No. PG 21206

EXPIRATION: January 1st, 1941

ASSURED: W X Y Z

PREMIUM: $541.85

The Fidelity and Casualty Company of New York

AMERICA FORE INSURANCE AND INDEMNITY GROUP

PLEASE READ YOUR POLICY

2434-5

Short Rate Cancellation Table

FOR TERM OF ONE YEAR

	Per cent. of Annual Prem.		Per cent. of Annual Prem.
1 day	2	50 days	28
2 days	4	55 "	29
3 "	5	60 " or 2 months	30
4 "	6	65 "	33
5 "	7	70 "	36
6 "	8	75 "	37
7 "	9	80 "	38
8 "	9	85 "	39
9 "	10	90 " or 3 months	40
10 "	10	105 "	45
11 "	11	120 " or 4 months	50
12 "	12	135 "	55
13 "	13	150 " or 5 months	60
14 "	13	165 "	65
15 "	14	180 " or 6 months	70
16 "	14	195 "	73
17 "	15	210 " or 7 months	75
18 "	16	225 "	78
19 "	16	240 " or 8 months	80
20 "	17	255 "	83
25 "	19	270 " or 9 months	85
30 " or 1 month	20	285 "	88
35 "	23	300 " or 10 months	90
40 "	26	315 "	93
45 "	27	330 " or 11 months	95
		360 " or 12 months	100

Period exceeding 20 days but not exceeding 25 days, to be the rate of 25 days, and so on up to one year.

FOR TERM OF THREE YEARS

	Per cent. of 3 yr. Prem.		Per cent. of 3 yr. Prem.
1 month	7.4	19 months	55.4
2 months	11.1	20 "	58.
3 "	14.8	21 "	60.7
4 "	18.5	22 "	63.3
5 "	22.2	23 "	65.9
6 "	25.9	24 "	68.5
7 "	27.8	25 "	71.2
8 "	29.6	26 "	73.8
9 "	31.5	27 "	76.4
10 "	33.3	28 "	79.
11 "	35.2	29 "	81.7
12 "	37.	30 "	84.3
13 "	39.6	31 "	86.9
14 "	42.3	32 "	89.5
15 "	44.9	33 "	92.1
16 "	47.5	34 "	94.8
17 "	50.2	35 "	97.4
18 "	52.8	36 "	100.

Period exceeding one month but not equaling two months, to be at the rate of two months and so on up to three years.

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NATIONAL STANDARD AUTOMOBILE LIABILITY POLICY

PLAINTIFF'S EXH

The Fidelity and Casualty Company of New York

"AMERICA FORE" INSURANCE AND INDEMNITY GROUP

A Stock Company

HOME OFFICE: 70644

FORM W
BY A RESIDENT
STATE WHERE
LAW SO REQU

DECLARATIONS

Name of insured X Y Z Co.

2. Address Springfield, Massachusetts (No. STREET TOWN COUNTY)

3. The named insured is 1-Corporation 2-Individuals

4. The occupation of the named insured is Employees of X Y Z C

5. The description of all automobiles covered is given below. The insurance under this to the Coverages for which a premium applicable to such automobile is charged. Cove automobile is charged are inoperative as to such automobile. The limit of the comp stated herein, subject to all of the terms of the policy having reference thereto.

This policy is issued to _____ Countersig

In the Sta

Policy No. Exhibit 6

Date: 19

for insurance

BRANCH OFFICE GENERAL AGENT _____ (ADDRESS)

L430B. 243b-6

President

DESCRIPTION	AUTO 1	AUTO 2
(A) TRADE NAME		
(B) MOTOR NUMBER		
(C) SERIAL NUMBER		
(D) YEAR AND MODEL		As per s
(E) STYLE OF BODY / CAPACITY IN TONS OF COMMERCIAL CAR		

6. COVERAGES	LIMITS OF LIABILITY	PREMIUM AUTO 1	PREMIUM AUTO 2	PREMIUM AUTO 3	PREMIUM AUTO 4	TOTAL
A. BODILY INJURY LIABILITY	$ 10,000 EACH PERSON AND SUBJECT TO THAT LIMIT FOR EACH PERSON; $ 20,000 EACH ACCIDENT	$	$	$	$	$ 772.80
B. PROPERTY DAMAGE LIABILITY	$ 5,000 EACH ACCIDENT	$	$	$	$	$ 173.50
C. GLASS BREAKAGE	ACTUAL CASH VALUE	$	$	$	$	$

AUTOMOBILE DEFINED. TWO OR MORE AUTOMOBILES. EXCEPT WHERE SPECIFICALLY STATED TO THE CONTRARY, THE WORD "AUTOMOBILE" WHEREVER USED IN THIS POLICY SHALL MEAN THE MOTOR VEHICLE TRAILER, OR SEMI-TRAILER DESCRIBED HEREIN; AND THE WORD "TRAILER" SHALL INCLUDE SEMI-TRAILER. WHEN TWO OR MORE AUTOMOBILES ARE INSURED HEREUNDER, THE TERMS OF THIS POLICY SHALL APPLY SEPARATELY TO EACH, BUT AS RESPECTS LIMITS OF BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY A MOTOR VEHICLE AND A TRAILER OR TRAILERS ATTACHED THERETO SHALL BE HELD TO BE ONE AUTOMOBILE.

TOTAL PREMIUM $946.30

7. Policy period: From January 1st, 1938 at 12:01 (HOUR AND MINUTE) o'clock A M., to January 1st, 1939 12:01 A.M. standard time at the address of the named insured as stated herein.

8. The purposes for which the automobile is to be used are Pleasure and business

PURPOSES OF USE DEFINED. (A) THE TERM "PLEASURE AND BUSINESS" IS DEFINED AS PERSONAL, PLEASURE, FAMILY, AND BUSINESS USE; (B) THE TERM "COMMERCIAL" IS DEFINED AS THE TRANSPORTATION OR DELIVERY OF GOODS, MERCHANDISE, OR OTHER MATERIALS, AND USES INCIDENTAL THERETO, IN DIRECT CONNECTION WITH THE NAMED INSURED'S BUSINESS OCCUPATION AS EXPRESSED ABOVE; (C) USE OF THE AUTOMOBILE FOR THE PURPOSES STATED

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The description of all automobiles covered is given below. The insurance under this to the Coverages for which a premium applicable to such automobile is charged. Cove automobile is charged are inoperative as to such automobile. The limit of the compa stated herein, subject to all of the terms of the policy having reference thereto.

DESCRIPTION	AUTO 1	AUTO 2
(A) TRADE NAME		
(B) MOTOR NUMBER		
(C) SERIAL NUMBER		
(D) YEAR AND MODEL		As per s
(E) STYLE OF BODY CAPACITY IN TONS OF COMMERCIAL CAR		

6. COVERAGES	LIMITS OF LIABILITY	PREMIUM AUTO 1	PREMIUM AUTO 2	PREMIUM AUTO 3	PREMIUM AUTO 4	TOTAL
A. BODILY INJURY LIABILITY	$ 10,000 EACH PERSON AND SUBJECT TO THAT LIMIT FOR EACH PERSON; $ 20,000 EACH ACCIDENT	$	$	$	$	$ 772.80
B. PROPERTY DAMAGE LIABILITY	$ 5,000 EACH ACCIDENT	$	$	$	$	$ 173.50
C. GLASS BREAKAGE	ACTUAL CASH VALUE	$	$	$	$	$

AUTOMOBILE DEFINED. TWO OR MORE AUTOMOBILES. EXCEPT WHERE SPECIFICALLY STATED TO THE CONTRARY, THE WORD "AUTOMOBILE" WHEREVER USED IN THIS POLICY SHALL MEAN THE MOTOR VEHICLE TRAILER, OR SEMI-TRAILER DESCRIBED HEREIN; AND THE WORD "TRAILER" SHALL INCLUDE SEMI-TRAILER. WHEN TWO OR MORE AUTOMOBILES ARE INSURED HEREUNDER, THE TERMS OF THIS POLICY SHALL APPLY SEPARATELY TO EACH, BUT AS RESPECTS LIMITS OF BODILY INJURY LIABILITY AND PROPERTY DAMAGE LIABILITY A MOTOR VEHICLE AND A TRAILER OR TRAILERS ATTACHED THERETO SHALL BE HELD TO BE ONE AUTOMOBILE.

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9. The automobile will be principally garaged and used in the above town, county, and state, unless otherwise specified herein.

10. The named insured is the sole owner of the automobiles, except as herein stated: As per Schedule attached

11. No insurer has canceled any automobile insurance issued to the named insured, nor declined to issue such insurance, during the past year, except as herein stated No exceptions

BRANCH OFFICE Met. nt;ak 12-29-38

GENERAL AGENT

AGENT OR BROKER P.A. Post & Co.Inc. 1 Liberty St., New York City (ADDRESS)

AGENCY CODE 49 0673

COUNTERSIGNED BY Duplicate Copy

John Doe (COUNTERSIGNING AGENT OR MANAGER)

Liab1471E 50M A76200!-AB12.000 (3804)020) 5M Duplicate

243-C

243b-6

Exhibit 6.

Graham President

for insurance

70644

191

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NATIONAL
STANDARD
AUTOMOBILE
LIABILITY POLICY

THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

(A Stock insurance company, herein called the company)

Does hereby agree with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and of the statements contained in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

INSURING AGREEMENTS

I COVERAGE A—BODILY INJURY LIABILITY. To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages, including damages for care and loss of services, because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, caused by accident and arising out of the ownership, maintenance or use of the automobile.

II COVERAGE B—PROPERTY DAMAGE LIABILITY. To pay on behalf of the insured all sums which the insured shall become obligated to pay by reason of the liability imposed upon him by law for damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

III COVERAGE C—GLASS BREAKAGE. To pay for the breakage of glass set as windshield and body plates as a part of an automobile described in the declarations for which a premium for glass breakage is specified therein.

IV DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS. It is further agreed that as respects insurance afforded by this policy under coverages A and B the company shall (a) defend in his name and behalf any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false, or fraudulent; but the company shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the company; (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all costs taxed against the insured in any such suit, all expenses incurred by the company, all interest accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon, and any expense incurred by the insured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident. The company agrees to pay the expenses incurred under divisions (a) and (b) of this section in addition to the applicable limit of liability of this policy.

V DEFINITION OF "INSURED". The unqualified word "insured" wherever used includes not only the named insured but also any person while using the automobile and any person or organization legally responsible for the use thereof, provided that the declared and actual use of the automobile is "pleasure and business" or "commercial," each as defined herein, and provided further that the actual use is with the permission of the named insured. The provisions of this paragraph do not apply: (a) to any person or organization with respect to any loss against which he has other valid and collectible insurance; (b) to any person or organization with respect to bodily injury to or death of any person who is a named insured; (c) to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any accident arising out of the operation thereof; (d) to any employee of an insured with respect to any action brought against said employee because of bodily injury to or death of another employee of the same insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such insured.

VI AUTOMATIC INSURANCE FOR NEWLY ACQUIRED AUTOMOBILES. If the named insured who is the owner of the automobile acquires ownership of another automobile, such insurance as is afforded by this policy applies also to such other automobile as of the date of its delivery to him, subject to the following additional conditions: (1) if the company insures all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it is used for pleasure purposes or in the business of the named insured as expressed in the declarations, but only to the extent applicable to all such previously owned automobiles; (2) if the company does not insure all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it replaces an automobile described in this policy and may be classified for the purpose of use stated in this policy, but only to the extent applicable to the replaced automobile; (3) the insurance afforded by this policy automatically terminates upon the replaced automobile at the date of such delivery; and (4) this agreement does not apply (a) to any loss against which the named insured has other valid and collectible insurance, nor (b) unless the named insured notifies the company within ten days following the date of delivery of such other automobile, nor (c) except during the policy period, but if the date of delivery of such other automobile is prior to the effective date of this policy the insurance applies as of the effective date of this policy, nor (d) unless the named insured pays any additional premium required because of the application of this insurance to such other automobile.

VII POLICY PERIOD, TERRITORY, PURPOSES OF USE. This policy applies only to accidents which occur and to direct losses to the property insured which are sustained during the policy period, while the automobile is within the United States in North America (exclusive of Alaska) or the Dominion of Canada, or while on a coastwise vessel between ports within said territory, and is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

THIS POLICY DOES NOT APPLY: (a) under any of the above coverages, while the automobile is used in the business of demonstrating or testing, or as a public or livery conveyance, or for carrying persons for a consideration, or while rented under contract or leased, unless such use is specifically declared and described in this policy and premium charged therefor; (b) under coverages A and B, while the automobile is used for the towing of any trailer not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile not covered by like insurance in the company; (c) under coverages A and B, while the automobile is operated by any person under the age of fourteen years, or by any person in violation of any state, federal or provincial law as to age applicable to [illegible]

to pay by reason of the liability imposed upon him by law for damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

III COVERAGE C—GLASS BREAKAGE. To pay for the breakage of glass set as windshield and body plates as a part of an automobile described in the declarations for which a premium for glass breakage is specified therein.

IV DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS. It is further agreed that as respects insurance afforded by this policy under coverages A and B the company shall (a) defend in his name and behalf any suit against the insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false, or fraudulent; but the company shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the company; (b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all costs taxed against the insured in any such suit, all expenses incurred by the company, all interest accruing after entry of judgment until the company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon, and any expense incurred by the insured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident. The company agrees to pay the expenses incurred under divisions (a) and (b) of this section in addition to the applicable limit of liability of this policy.

V DEFINITION OF "INSURED". The unqualified word "insured" wherever used includes not only the named insured but also any person while using the automobile and any person or organization legally responsible for the use thereof, provided that the declared and actual use of the automobile is "pleasure and business" or "commercial," each as defined herein, and provided further that the actual use is with the permission of the named insured. The provisions of this paragraph do not apply: (a) to any person or organization with respect to any loss against which he has other valid and collectible insurance; (b) to any person or organization with respect to bodily injury to or death of any person who is a named insured; (c) to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any accident arising out of the operation thereof; (d) to any employee of an insured with respect to any action brought against said employee because of bodily injury to or death of another employee of the same insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such insured.

VI AUTOMATIC INSURANCE FOR NEWLY ACQUIRED AUTOMOBILES. If the named insured who is the owner of the automobile acquires ownership of another automobile, such insurance as is afforded by this policy applies also to such other automobile as of the date of its delivery to him, subject to the following additional conditions: (1) if the company insures all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it is used for pleasure purposes or in the business of the named insured as expressed in the declarations, but only to the extent applicable to all such previously owned automobiles; (2) if the company does not insure all automobiles owned by the named insured at the date of such delivery, insurance applies to such other automobile, if it replaces an automobile described in this policy and may be classified for the purpose of use stated in this policy, but only to the extent applicable to the replaced automobile; (3) the insurance afforded by this policy automatically terminates upon the replaced automobile at the date of such delivery; and (4) this agreement does not apply (a) to any loss against which the named insured has other valid and collectible insurance, nor (b) unless the named insured notifies the company within ten days following the date of delivery of such other automobile, nor (c) except during the policy period, but if the date of delivery of such other automobile is prior to the effective date of this policy the insurance applies as of the effective date of this policy, nor (d) unless the named insured pays any additional premium required because of the application of this insurance to such other automobile.

VII POLICY PERIOD, TERRITORY, PURPOSES OF USE. This policy applies only to accidents which occur and to direct losses to the property insured which are sustained during the policy period, while the automobile is within the United States in North America (exclusive of Alaska) or the Dominion of Canada, or while on a coastwise vessel between ports within said territory, and is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

THIS POLICY DOES NOT APPLY: (a) under any of the above coverages, while the automobile is used in the business of demonstrating or testing, or as a public or livery conveyance, or for carrying persons for a consideration, or while rented under contract or leased, unless such use is specifically declared and described in this policy and premium charged therefor; (b) under coverages A and B, while the automobile is used for the towing of any trailer not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile not covered by like insurance in the company; (c) under coverages A and B, while the automobile is operated by any person under the age of fourteen years, or by any person in violation of any state, federal or provincial law as to age applicable to such person or to his occupation, or by any person in any prearranged race or competitive speed test; (d) under coverages A and B to any liability assumed by the insured under any contract or agreement; or to any accident which occurs after the transfer during the policy period of the interest of the named insured in the automobile, without the written consent of the company; (e) under coverage A, to bodily injury to or death of any employee of the insured while engaged in the business of the insured, other than domestic employment, or in the operation, maintenance or repair of the automobile; or to any obligation for which the insured may be held liable under any workmen's compensation law; (f) under coverage B, to property owned by, rented to, leased to, in charge of, or transported by any insured; (g) under coverage C, to lamps or mirrors, or to loss caused directly or indirectly by fire, theft, robbery, or pilferage.

INSURED X Y Z Co. THE FIDELITY CASUALTY COMPANY OF NEW YORK POLICY No. A 840618

SHEET NO. / ITEM NO.	EQUIP. NO.	YEAR MODEL	TRADE NAME	BODY TYPE, IF TRUCK STATE TONNAGE	MOTOR NUMBER	SERIAL OR FACTORY NO.	LOCATION	OPERATOR	SCHEDULE OF COVERAGE & LIMITS OF INS. ALL ITEMS BELOW MARKED VOID OR NOT FILLED IN ARE VOID — BODILY INJURY OR DEATH — LIMITS: ONE PERSON	BODILY INJURY OR DEATH — LIMITS: TWO OR MORE PERSONS	PROPERTY DAMAGE LIMIT	EFFECTIVE DATE OF COVERAGE	PREMIUM DISTRIBUTION: BODILY INJURY LIABILITY	PREMIUM DISTRIBUTION: PROPERTY DAMAGE
		1935	Pontiac	Sedan	675013	6AB-40137	Hempstead, L.I. New York	G. S. Baird	10000.	20000.	5000.	1-1-38	41.40	7.50
		1938	Ford	Sedan	1102781	1102781	Flushing, N.Y.	A. N. Gardner	10000.	20000.	5000.	1-1-38	90.60	8.50
		1936	Plymouth	Sedan	P2376771	2880378	Lakewood, Ohio	A. J. Kelly	10000.	20000.	5000.	1-1-38	43.70	12.00
		1938	Dodge	Sedan	D8-7239	30006908	Fairlawn, New Jersey	W. H. Singley	10000.	20000.	5000.	1-1-38	47.15	12.00
		1938	Plymouth	Sedan	P4 3165	10110719	Harrisburg, Pennsylvania	H. J. Allen	10000.	20000.	5000.	1-1-38	21.85	9.00
		1937	Oldsmobile	Sedan	B-746-298	K-440142	New Orleans, Louisiana	G.A. Robideaux	10000.	20000.	5000.	1-1-38	29.90	10.00
		1936	DeSoto	Sedan	S1 39220	5517089	Detroit, Michigan	H.S. Hoag	10000.	20000.	5000.	1-1-38	26.45	9.00
		1936	Buick	Sedan	430798-29	2909942	St. Albans, New York	A.T. Mattson	10000.	20000.	5000.	1-1-38	90.60	8.50
		1936	Oldsmobile	Coach	1-2367-6A	133805	Poughkeepsie New York	Vera S. Alexander	10000.	20000.	5000.	1-1-38	42.55	7.00
		1937	Pontiac	Coach	6-252702	6-GA-28991	Detroit, Michigan	R. J. Greene	10000.	20000.	5000.	1-1-38	26.45	9.00
		1937	Dodge	Sedan	D5-168994	5277300	Somers, Connecticut	R. H. Syner	10000.	20000.	5000.	1-1-38	37.95	9.00
		1937	Dodge	Sedan	D5-209682	4714382	Cleveland, Ohio	D. B. Lawrence	10000.	20000.	5000.	1-1-38	43.70	12.00
		1936	Pontiac	Coupe	6126456	6AB36250	Roosevelt, L.I., N.Y.	Andrew Ferraro	10000.	20000.	5000.	1-1-38	41.40	7.50
		1937	Plymouth	Sedan	P4 283541	102782-03	Bronx, N.Y.	A.A.Kreutzer	10000.	20000.	5000.	1-1-38	90.85	15.50
		1937	Ford	Coupe	3399627		Rochester, New York	H.H. Strickland	10000.	20000.	5000.	1-1-38	41.40	8.00
		1937	Oldsmobile	Coupe	7804572	7.489791	Rochester, New York	W.T.Myrtle,Jr.	10000.	20000.	5000.	1-1-38	41.40	8.00
		1937	Chrysler	Coupe	C39910	6706603	Richmond, Va.	D.F.Hardeman	10000.	20000.	5000.	1-1-38	37.95	7.00
		1937	Plymouth	Coach	P4-111952	1106466	Philadelphia, Pennsylvania	L.L.Cherbonneau	10000.	20000.	5000.	1-1-38	57.50	13.00
													772.80	173.50

THIS FORM TO BE USED ONLY FOR ORIGINAL SCHEDULE OR ADDITIONS TO ORIGINAL SCHEDULE.

BRANCH OFFICE — GENERAL AGENT: Hoe 65-0673

AGENT OR BROKER: P.A. Post & Co. (ADDRESS)

This schedule forms a part of Policy No. A 840618 issued to X Y Z Co.

B M Culver President

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LIBIC, N.Y. 4-(1933-1937)

CONDITIONS

A LIMITS OF LIABILITY. The limit of bodily injury liability expressed in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury to or death of one person in any one accident; the limit of such liability expressed in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury to or death of two or more persons in any one accident. The inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

B NOTICE OF ACCIDENT—CLAIM OR SUIT. Upon the occurrence of an accident written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the name and address of the injured and of any available witnesses. If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

C ACTION AGAINST COMPANY. No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the conditions hereof, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant, and the company, nor in either event unless suit is instituted within two years and one day after the date of such judgment or written agreement. Any person or his legal representative who has secured such judgment or written agreement shall thereafter be entitled to recover under the terms of this policy in the same manner and to the same extent as the insured. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability. Bankruptcy or insolvency of the insured shall not relieve the company of any of its obligations hereunder.

D OTHER INSURANCE. If the named insured has other insurance against a loss covered by this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability expressed in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

E ASSISTANCE AND COOPERATION OF THE INSURED. The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and the company shall reimburse the insured for any expense, other than loss of earnings, incurred at the company's request. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.

G SUBROGATION. In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor and the insured shall execute all papers required and shall do everything that may be necessary to secure such rights.

H ASSIGNMENT. No assignment of interest under this policy shall bind the company until its consent is endorsed hereon; if, however, the named insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless cancelled, shall, if written notice be given to the company within thirty days after the date of such death or adjudication, cover (1) the named insured's legal representative as the named insured, and (2) subject otherwise to the provisions of paragraph V, any person having proper temporary custody of the automobile, as an insured, until the appointment and qualification of such legal representative, but in no event for a period of more than thirty days after the date of such death or adjudication.

I CANCELATION. This policy may be canceled by the named insured by mailing written notice to the company stating when thereafter such cancelation shall be effective, in which case the company shall, upon demand, refund the excess of premium paid by such insured above the customary short rate premium for the expired term. This policy may be canceled by the company by mailing written notice to the named insured at the address shown in this policy stating when not less than five days thereafter such cancelation shall be effective, and upon demand the company shall refund the excess of premium paid by such insured above the pro rata premium for the expired term. The mailing of notice as aforesaid shall be sufficient proof of notice and the insurance under this policy as aforesaid shall end on the effective date and hour of cancelation stated in the notice. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing. The company's check or the check of its representative similarly mailed or delivered shall be a sufficient tender of any refund of premium due to the named insured. If required by statute in the state where this policy is issued, refund of premium due to the named insured shall be tendered with notice of cancelation when the policy is canceled by the company and refund of premium due to the named insured shall be made upon computation thereof when the policy is canceled by the named insured.

J CHANGES. No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by the president, vice-president, or secretary.

K DECLARATIONS. By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

L FINANCIAL RESPONSIBILITY LAWS. Any insurance provided by this policy for bodily injury liability or property damage liability shall conform to the provisions of the motor vehicle financial responsibility law of any state or province which shall be applicable with respect to any such liability arising from the use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim or suit, involving a breach of the terms of this policy and for any payment the company would not have been obligated to make under the provisions of this policy except for the agreement contained in this paragraph.

In Witness Whereof the Company has caused this policy to be signed by its president and its secretary, but the policy shall not be binding upon the Company unless countersigned on the declarations page by a duly authorized representative of the Company.

DUPLICATE COPY

J OTHER INSURANCE. If the named insured has other insurance against a loss covered by this policy, the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability expressed in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

E ASSISTANCE AND COOPERATION OF THE INSURED. The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and the company shall reimburse the insured for any expense, other than loss of earnings, incurred at the company's request. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.

G SUBROGATION. In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor and the insured shall execute all papers required and shall do everything that may be necessary to secure such rights.

H ASSIGNMENT. No assignment of interest under this policy shall bind the company until its consent is endorsed hereon; if, however, the named insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless cancelled, shall, if written notice be given to the company within thirty days after the date of such death or adjudication, cover (1) the named insured's legal representative as the named insured, and (2) subject otherwise to the provisions of paragraph V, any person having proper temporary custody of the automobile, as an insured, until the appointment and qualification of such legal representative, but in no event for a period of more than thirty days after the date of such death or adjudication.

I CANCELATION. This policy may be canceled by the named insured by mailing written notice to the company stating when thereafter such cancelation shall be effective, in which case the company shall, upon demand, refund the excess of premium paid by such insured above the customary short rate premium for the expired term. This policy may be canceled by the company by mailing written notice to the named insured at the address shown in this policy stating when not less than five days thereafter such cancelation shall be effective, and upon demand the company shall refund the excess of premium paid by such insured above the pro rata premium for the expired term. The mailing of notice as aforesaid shall be sufficient proof of notice and the insurance under this policy as aforesaid shall end on the effective date and hour of cancelation stated in the notice. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing. The company's check or the check of its representative similarly mailed or delivered shall be a sufficient tender of any refund of premium due to the named insured. If required by statute in the state where this policy is issued, refund of premium due to the named insured shall be tendered with notice of cancelation when the policy is canceled by the company and refund of premium due to the named insured shall be made upon computation thereof when the policy is canceled by the named insured.

J CHANGES. No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by the president, vice-president, or secretary.

K DECLARATIONS. By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

L FINANCIAL RESPONSIBILITY LAWS. Any insurance provided by this policy for bodily injury liability or property damage liability shall conform to the provisions of the motor vehicle financial responsibility law of any state or province which shall be applicable with respect to any such liability arising from the use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim or suit, involving a breach of the terms of this policy and for any payment the company would not have been obligated to make under the provisions of this policy except for the agreement contained in this paragraph.

In Witness Whereof the Company has caused this policy to be signed by its president and its secretary, but the policy shall not be binding upon the Company unless countersigned on the declarations page by a duly authorized representative of the Company.

DUPLICATE COPY

H. E. Remington

Secretary

B. M. Culver

President

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OFFICERS

BERNARD M. CULVER, President
FRANK A. CHRISTENSEN, Vice President

Vice Presidents:
HALE ANDERSON
CHAS. L. NEWMILLER
CHANNING B. CORNELL
RAYMOND N. CAVERLY
MARTIN J. O'BRIEN

Secretaries:
WM. E. LAMM, JR.
FRANK E. O'BRIEN
WM. L. BATES
HAROLD K. REMINGTON

CHAS. E. SWAN, Treasurer

Assistant Secretaries:
CORNELIUS O'LEARY, JR.
WM. P. HARVEY
LEWIS A. NICHOLAS
GEORGE A. BOYD

WM. H. EMES, Comptroller

DIRECTORS

FRANK A. CHRISTENSEN
BERNARD M. CULVER
EDWARD C. DELAFIELD
GAYER G. DOMINICK
WADE FETZER
ROBERT J. HILLAS
BENJAMIN R. C. LOW
ETHELBERT I. LOW
HALL PARK MCCULLOUGH
R. STUYVESANT PIERREPONT
AUGUSTE G. PRATT
PHILIP J. ROOSEVELT
CHAS. E. SWAN
WILLIS D. WOOD

National Standard Automobile Liability Policy

DUPLICATE COPY

No. A 840618

Expiration January 1st, 1939

Insured X Y Z Co.

Premium $946.30

The Fidelity and Casualty Company of New York

"AMERICA FORE" INSURANCE AND INDEMNITY GROUP

IMPORTANT
Notice of an accident, however slight, is required.

PLEASE READ YOUR POLICY

Short Rate Cancelation Table

For Term of One Year

		Per Cent of Annual Premium
1 day		2
2 days		4
3 "		5
4 "		6
5 "		7
6 "		8
7 "		9
8 "		9
9 "		10
10 "		10
11 "		11
12 "		12
13 "		13
14 "		13
15 "		14
16 "		14
17 "		15
18 "		16
19 "		16
20 "		17
25 "		19
30 "	or one month	20
35 "		23
40 "		26
45 "		27
50 "		28
55 "		29
60 "	or two months	30
65 "		33
70 "		36
75 "		37
80 "		38
85 "		39
90 "	or three months	40
105 "		45
120 "	or four months	50
135 "		55
150 "	or five months	60
165 "		65
180 "	or six months	70
195 "		73
210 "	or seven months	75
225 "		78
240 "	or eight months	80
255 "		83
270 "	or nine months	85
285 "		88
300 "	or ten months	90
315 "		93
330 "	or eleven months	95
360 "	or twelve months	100

Period exceeding 20 days but not exceeding 25 days, to be the rate of 25 days, and so on up to one year.

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EXHIBIT 7

Maximum Benefit Accident Policy
Providing Indemnity for Bodily Injury Sustained Through Accidental Means and Resulting in Disability, Dismemberment, Loss of Sight, or Death: to the Extent Herein Provided.

DC 130555
SPOILED
No. DC 325416

The Fidelity and Casualty Company of New York

"AMERICA FORE"

(herein called the Company),

DOES HEREBY INSURE the person (herein called the Insured) named in the Copy of the Application, AGAINST— Bodily Injury sustained during the term hereinafter specified, through accidental means, and resulting directly, independently and exclusively of all other causes, in—

INSURING CLAUSE

(a) Total Disability that within thirty days from the date of the accident continuously prevents the Insured from performing each and every duty pertaining to his occupation,

(b) Partial Disability that within thirty days from the date of the accident or immediately following a period of total disability continuously prevents the Insured from performing work essential to the duties of his occupation,

(c) Dismemberment or Loss of Eyesight (as specified in Article 1) sustained within twenty-six weeks from the date of the accident; or within two hundred weeks from the date of the accident while the Insured suffers total disability as the direct result of the bodily injury causing the dismemberment or loss of eyesight,

(d) Death (as specified in Article 2);

Subject to all the provisions and limitations hereinafter contained.

DISMEMBERMENT AND LOSS OF EYESIGHT

Article 1. If the Insured suffers total disability, and if, during the period of the said disability, but within two hundred weeks from the date of the accident, the Insured suffers, as the direct result of the bodily injury causing the said disability, one of the losses described in this Article, or if, within twenty-six weeks from the date of the accident, irrespective of disability, the Insured suffers one of the said losses as the direct result of a bodily injury, the Company will pay the Insured in one sum according to the following schedule, and in addition, the Weekly Indemnity to the date of dismemberment or loss of eyesight but not more than [illegible] sum insured

DISMEMBERMENT AND LOSS OF EYESIGHT

Article 1. If the Insured suffers total disability, and if, during the period of the said disability, but within two hundred weeks from the date of the accident, the Insured suffers, as the direct result of the bodily injury causing the said disability, one of the losses described in this Article, or if, within twenty-six weeks from the date of the accident, irrespective of disability, the Insured suffers one of the said losses as the direct result of a bodily injury, the Company will pay the Insured in one sum according to the following schedule, and in addition, the Weekly Indemnity to the date of dismemberment or loss of eyesight; but not more than one sum according to the said schedule will be paid for injuries resulting from one accident:

FOR LOSS OF	*A Sum Equal to the Weekly Indemnity for*
BOTH HANDS OR BOTH FEET	600 Weeks
ONE HAND AND ONE FOOT	600 Weeks
SIGHT OF BOTH EYES	600 Weeks
EITHER HAND OR FOOT AND SIGHT OF ONE EYE	600 Weeks
ONE HAND	300 Weeks
ONE FOOT	300 Weeks
SIGHT OF ONE EYE	200 Weeks
THUMB AND INDEX FINGER OF EITHER HAND	150 Weeks

Loss shall mean: with regard to hands and feet, dismemberment by actual separation through or including the entire wrist joints or ankle joints; with regard to eyes, the irrecoverable total loss of sight; with regard to thumb and index finger, dismemberment by actual separation through or including the entire metacarpo-phalangeal joints.

DEATH

Article 2. If the Insured suffers total disability and if, during the period of the said disability, but within two hundred weeks from the date of the accident, the Insured suffers death as the direct result of the bodily injury causing the said disability, or if, within twenty-six weeks from the date of the accident, irrespective of disability, the Insured suffers death as the direct result of a bodily injury: the Company will pay the Beneficiary **THE PRINCIPAL SUM** and, in addition, the Weekly Indemnity for that part of the period between the date of the accident and the date of death for which no Weekly Indemnity has been paid.

TOTAL DISABILITY

Article 3. If the Insured suffers total disability, the Company will pay the Insured for the period of the said disability, not exceeding two hundred consecutive weeks. **The Weekly Indemnity**

TOTAL AND PERMANENT DISABILITY

Article 4. If the Insured suffers total disability for the period of two hundred consecutive weeks, and if at the end of the said period the Insured is totally and permanently disabled, as the direct result of the bodily injury causing the said two hundred weeks' disability, and is thereby permanently incapable of engaging in any occupation or employment for wage or profit, the Company, in addition to the Weekly Indemnity paid under Article 3, will pay the Insured an amount equal to the **WEEKLY INDEMNITY FOR 600 WEEKS**

PARTIAL DISABILITY

Article 5. If the Insured suffers partial disability, the Company will pay for a period not exceeding fifty-two consecutive weeks, as follows: **Three-Quarters the Weekly Indemnity** for that portion of the said period throughout which the Insured is wholly disabled from performing each and every duty pertaining to his occupation for three-quarters of his business time; **Half the Weekly Indemnity** for that portion of the said period throughout which the Insured is wholly disabled from performing any important duty pertaining to his occupation; **One-Quarter the Weekly Indemnity** for that portion of the said period during which the Insured is not entitled to a benefit under either of the preceding sections of this Article, and throughout which his efficiency is impaired for performing the work pertaining to his occupation. But no recovery may be had under more than one of the preceding sections of this Article for any one portion of the period of fifty-two weeks.

No payment under Articles 3, 4, and 5 will be made on account of any loss specified in Article 1, except as provided in the said Article 1.

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FREEZING, HYDROPHOBIA, ASPHYXIATION

Article 6. Any one of the following, namely,—freezing, hydrophobia, asphyxiation—suffered through accidental means (excluding suicide, sane or insane, or any attempt thereat, sane or insane), shall be deemed a bodily injury within the meaning of this policy.

BLOOD-POISONING

Article 7. Blood-poisoning resulting directly from a bodily injury shall be deemed to be included in the said term, bodily injury.

ELECTIVE BENEFITS

Article 8. The Insured, if he so elects in writing within twenty days from the date of the accident, may take in lieu of the indemnity provided under Articles 3 and 5, indemnity in one sum according to the following schedule, provided that the Insured has sustained one of the said injuries described in the said schedule, solely through accidental means during the term of the policy, but not more than one elective benefit shall be paid for bodily injuries resulting from one accident.

SCHEDULE

On the basis of a Weekly Indemnity of $25

Proportionate amounts are payable when the Weekly Indemnity is larger or smaller

DISMEMBERMENT OF—	
Fingers, one or more entire	$160
Toes, one or more entire	200
COMPLETE DISLOCATION OF—	
Shoulder	75
Elbow	100
Wrist	120
Hip	300
Knee	160
Foot, two or more bones not toes	$160
Ankle	160
Toes, two or more	60
Fingers, two or more	60
COMPLETE FRACTURE OF—	
Skull, both tables	320
Lower jaw	80
Collar Bone	160
Pelvis	240
Thigh Shaft	$300
Leg, Tibia and Fibula	200
Knee Cap	200
Upper Arm, Humerus	160
Forearm, one or both bones	160
Ribs, two or more	100
Foot, two or more bones not toes	120
Hand, two or more bones not fingers	120
Toes, two or more	100
Fingers, two or more	100

HOSPITAL OR SANATORIUM CHARGES, OR NURSE'S FEES

Article 9. If a bodily injury for which indemnity is payable under this policy is sustained by the Insured, and if, within ninety days from the date of the accident, the said bodily injury necessarily confines the Insured in a hospital or sanatorium, or within the said period necessitates the attendance of a licensed graduate nurse, the Company (in addition to the Weekly Indemnity or any other indemnity payable for the said bodily injury) will pay the Insured for the actual expense of such hospital or sanatorium charges and nurse's fees, not exceeding

The Weekly Indemnity

for each week of the period, not exceeding fifteen weeks throughout which he is so confined or is so attended, or both, but both such confinement and attendance shall not increase the said limit.

PHYSICIAN'S OR SURGEON'S FEES FOR NON-DISABLING INJURIES

Article 10. If the Insured suffers a bodily injury that does not disable him or entitle him to any indemnity under any other provision of this policy, but on account of said bodily injury he receives immediate treatment by a legally qualified physician or surgeon, excluding dental treatment not required by a bodily injury, the Company will reimburse the Insured for the cost thereof, upon satisfactory proof from the attending physician or surgeon, not exceeding an amount equal to the

Weekly Indemnity for One Week

SURGEON'S FEES

Article 11. If a bodily injury, for which indemnity is payable under this policy, is suffered by the Insured, and if on account of the said bodily injury, and within ninety days from the date of the accident, the Insured undergoes a surgical operation named in the following schedule the Company (in addition to the Weekly Indemnity or any

SURGEON'S FEES

Article 11. If a bodily injury, for which indemnity is payable under this policy, is suffered by the Insured, and if on account of the said bodily injury, and within ninety days from the date of the accident, the Insured undergoes a surgical operation named in the following schedule, the Company (in addition to the Weekly Indemnity or any other indemnity payable for said bodily injury), will pay the Insured the sum fixed for such operation according to the said schedule; provided that if the Insured undergoes more than one such surgical operation on account of bodily injuries resulting from one accident, he must elect for which operation payment shall be made; and not more than one of the said amounts payable under the said schedule shall be payable for bodily injuries resulting from one accident, nor shall any amount be payable on account of a surgical operation required by a bodily condition that existed prior to the date of the policy.

SCHEDULE

On the basis of a Weekly Indemnity of $25

Proportionate amounts are payable when the Weekly Indemnity is larger or smaller

AMPUTATION OF—

Foot, Hand or Forearm	$ 25
Leg, at or below knee	50
Arm, above elbow	50
Thigh	100
Fingers, one or more entire	10
Toes, one or more entire	25

REDUCTION OF DISLOCATION OF—

Shoulder, Elbow, Hip, Knee or Ankle	25
Wrist or Jaw	15
Fingers, one or more	10

EXCISION OF—

Shoulder, Hip, or Knee Joint	100
Elbow, Wrist, or Ankle Joint	50

EYE, EAR OR NOSE—

Any cutting operations	10

LAPAROTOMY (opening of the abdominal cavity) for treatment or diagnosis $100

INCISION FOR—

Synovitis (inflammation of the lining membrane of a joint)	25

INJECTION OF—

Anti-tetanic serum into frontal lobe of brain	100

SEQUESTROTOMY (removal of dead bone) 35

REDUCTION OF FRACTURE OF—

Nose, Lower Jaw, Collar Bone, or Shoulder Blade	25
Breast Bone	10
Rib or Ribs	$ 10
Upper Arm	35
Forearm, one or both bones	25
Wrist or Hand	15
Fingers, one or more	10
Pelvis or Sacrum, any bones of	50
Coccyx	10
Thigh	75
Knee Cap	50
Leg Bones, one or both	50
Foot, two or more bones not toes	15
Toes, one or more	10
Spine or Spinal Cord—Operation with removal of portion of vertebra	100

HYDROPHOBIA—Pasteur Treatment 50

TETANUS (lockjaw)—

Injection of antitoxin	5

GUNSHOT WOUNDS—Removal of shot or bullet 25

SKULL TREPHINING for fracture 100

SUTURING WOUNDS 5

INDEMNITY FOR AERIAL TRAVEL INJURIES

Article 12. **If the Insured sustains a bodily injury within the terms of this policy while the Insured is riding as a passenger in or on a licensed passenger aeroplane or dirigible operated by an incorporated passenger carrier, while such aeroplane or dirigible is flown on a published schedule by a licensed passenger pilot, over a definitely established regular passenger route of such carrier, and between definitely established airports; the Company will pay any indemnity to which the Insured may be entitled under the foregoing Articles, as the result of the said bodily injury; provided that the indemnity payable under Article 1 is limited to half the amounts payable in accordance with the terms of the said Article, and, provided further, that this Article does not cover bodily injuries or death sustained while the Insured is acting as a pilot or mechanic or as member of crew of any aeroplane or dirigible, nor sustained by the Insured in any military or naval aircraft, nor sustained under any other conditions than those hereinbefore specified as covered.**

IDENTIFICATION

Article 13. If the Insured by reason of injury or illness is physically unable to communicate with relatives or friends, the Company, upon receipt of a telegram or other message giving the number of this policy, will immediately transmit to them any information respecting him and will defray all expenses, not exceeding the sum of One Hundred Dollars, necessary to put the Insured in their care.

Standard Provisions

1. **This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the Company's classification of risks and premium rates in the event that the Insured is injured after having changed his occupation to one classified by the Company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the Company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the Company for such more hazardous occupation.**

If the law of the state in which the Insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the Company in accordance with such law, but if such filing is not required by such law then they shall mean the Company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the Company is liable.

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed hereon.

3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the Company or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

4. Written notice of injury on which claim may be based must be given to the Company within twenty days after the date of the accident causing such injury. In event of accidental death immediate notice thereof must be given to the Company.

5. Such notice given by or in behalf of the Insured or Beneficiary, as the case may be, to the Company at its home office in New York City or to any authorized agent of the Company, with particulars sufficient to identify the Insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

6. The Company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the Company at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the Company is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

8. The Company shall have the right and opportunity to examine the person of the Insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid immediately after receipt of due proof.

10. Upon request of the Insured and subject to due proof of loss all accrued indemnity for loss of time on account of disability will be paid at the expiration of each thirty days during the continuance of the period for which the Company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. Indemnity for loss of life of the Insured is payable to the Beneficiary if surviving the Insured, and otherwise to the estate of the Insured. All other indemnities of this policy are payable to the Insured.

12. If the Insured shall at any time change his occupation to one classified by the Company as less hazardous than that stated in the policy, the Company, upon written request of the Insured and surrender of the policy, will cancel the same and will return to the Insured the unearned premium.

13. Consent of the Beneficiary shall not be requisite to surrender or assignment of this policy, or to change of Beneficiary, or to any other changes in the policy.

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the Insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

16. The Company may cancel this policy at any time by written notice delivered to the Insured or mailed to his last address, as shown by the records of the Company, together with cash or the Company's check for the unearned portion of the premiums actually paid by the Insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

General Provisions

1. If the Insured [illegible]

in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the Insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

16. The Company may cancel this policy at any time by written notice delivered to the Insured or mailed to his last address, as shown by the records of the Company, together with cash or the Company's check for the unearned portion of the premiums actually paid by the Insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

General Provisions

1. If the Insured sustains any one of the losses described in Article 1, the policy shall immediately terminate except as to the indemnity payable for the said loss under the said Article 1, and upon the payment of the said indemnity the policy shall be surrendered to the Company.

2. No recovery shall be had under more than one Article of this policy on account of bodily injuries the result of one accident except as specifically provided in Articles 1, 2, 4, 5, 9, and 11.

3. Any failure to comply with the provisions of this policy shall render invalid any claim under this policy.

4. No change of Beneficiary and no assignment of interest under this policy shall bind the Company unless the written consent of the Company is endorsed hereon by the President, Vice-president, Secretary, or one of the Assistant Secretaries of the Company. Neither notice given to nor the knowledge of any agent or any other person, whether received or acquired before or after the date of this policy, shall be held to waive any of the terms or provisions or statements of this policy, or to preclude the Company from asserting any defense under said terms, provisions, and statements, unless set forth in an endorsement added hereto and signed by one of the said officers.

5. The following terms, viz., bodily injury, total disability, partial disability, dismemberment, loss of eyesight, and death, shall be construed and understood as those terms are defined in the Insuring Clause.

6. This policy does not cover suicide, sane or insane, nor any attempt thereat, sane or insane, nor bodily injury or death (1) sustained by the Insured while in, or in consequence of having been in, any aircraft, or while participating in, or in consequence of having participated in, aeronautics, except as provided in Article 12; (2) sustained by the Insured while engaged in military or naval service in time of war; (3) caused by war or acts of countries at war.

7. This policy is issued in consideration of the premium charged therefor and of the statements made in the application, a copy of which is endorsed upon and is hereby made a part of this contract. The falsity of any statement in the application for this policy materially affecting either the acceptance of the risk or the hazard assumed hereunder, or made with intent to deceive shall bar all right to recovery under this policy. No provision of the charter or by-laws of the Company not included herein shall avoid the policy or be used in evidence in any legal proceeding hereunder.

8. Subject to all the policy provisions and limitations and to the consent of the Company, this policy may be renewed upon payment of the premium required.

9. The Insured's occupation is Salesman - Traveling & Office

10. The duties of the Insured's occupation are fully described as follows:
Selling Tires and Accessories to Dealers

11. The Insured's occupation is classed by the Company as A

12. The premium for the t rm of this policy is Forty One and 20/100 ---------- **Dollars ($** 41.20 **).**

13. This policy is dated the 29th **day of** January **, 193** 8 **, at noon, standard time, at the place of the Insured's address set forth in the Copy of the Application.**

14. The term of this policy is Twelve **months from noon, standard time, of the day that this policy is dated.**

15. The Principal Sum of this policy is
Four Thousand and 00/100 **--dollars.**
(Do not use figures)

16. The Weekly Indemnity of this policy is
Forty and 00/100 ---- **dollars a week.**
(Do not use figures)

In Witness Whereof the Company has caused this policy to be signed by its president and its secretary; but the policy shall not be binding upon the Company until countersigned by a duly authorized representative of the Company.

SAMPLE

Secretary.

SAMPLE

President.

Countersigned by John Doe

Authorized Representative.

AC 3211 Standard

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Exhibit 7

The Fidelity and Casualty Company of New York

"America Fore"

Home Office New York, N.Y.

Maximum Benefit Accident Policy

DC 160555

Sample

No. DC 225116

Providing Indemnity for Bodily Injury Sustained Through Accidental Means and Resulting in Disability, Dismemberment, Loss of Sight, or Death: to the Extent Herein Provided.

ISSUED TO R. P. Rupprecht

January 29, 1938

PREMIUM $ 41.20

OFFICERS

BERNARD M. CULVER, President

FRANK A. CHRISTENSEN, Vice President

HALE ANDERSON
CHAS. L. NEWMILLER
CHANNING B. CORNELL
RAYMOND N. CAVERLY
MARTIN J. O'BRIEN
— Vice Presidents

LAMAR HILL, Vice President and General Counsel

WILLIAM E. LAMM, JR.
FRANK E. O'BRIEN
W. L. BATES
HAROLD K. REMINGTON
— Secretaries

CHAS. E. SWAN, Treasurer

WILLIAM P. HARVEY
LEWIS A. NICHOLAS
CORNELIUS O'LEARY, JR.
— Assistant Secretaries

WM. H. EMES, Auditor

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PHILIP J. ROOSEVELT
CHAS. E. SWAN
WILLIS D. WOOD

COPY OF APPLICATION TO THE FIDELITY AND CASUALTY COMPANY OF NEW YORK

I hereby apply for Maximum Benefit Accident policy of insurance to be based upon the following statements:

1. What is your full name? Robert Philip Rupprecht Birthplace? Marysville, Ohio Birthdate? March 8, 1913
   Age? 24 Height? 5 ft. 11 ins. Weight? 182 lbs. Sex? M. Race? W.
2. Residence P. O. Address? Wakefield Apts., Fredericksburg, Virginia
   (Street No. / Street / Town / County / State)
3. Your beneficiary's name? Winifred Rupprecht Age? 24 Relationship? Wife Address? Same
4. Your firm's or employer's name? Firestone Tire & Rubber Co.
   Business? Tire & Rubber Address? 2001 Oak Baltimore, Md.
   (Street No. / Street / Town / County / State)
5. Your occupation? Salesman - Traveling & Office
6. A full description of the duties of your occupation? Selling Tire and Accessories to Dealers
7. Does your weekly income exceed the gross amount of Weekly Indemnity under all policies carried by you? Yes
8. What Accident or Health Insurance have you in this Company? None
9. What Accident or Health Insurance have you of any other Insurer? None
10. What Accident, Health or Life Insurance issued to you has been cancelled by this or any other Insurer? None
11. What renewals of such insurance have been refused? None
12. What applications ever made by you for such insurance have been declined? None
13. What applications for such insurance have you made concerning which you have not been notified of the action taken thereon?
14. What indemnity have you received for injuries or illness? None
15. Have you in contemplation any special journey? No
16. Are your habits of life correct and temperate? Yes
17. Are you in sound condition mentally and physically? Yes
18. Have you any mental or physical defect not specified above? No
19. Have you received medical or surgical advice or treatment at any time during the last five years or have you been disabled at any time during that period? DATE OF ADVICE, TREATMENT, OR DISABILITY? NATURE? DURATION?

Carbuncle - Non-disabling - One week 12/37

This application is made by the applicant on the 29th day of January, 1938

R.P. Rupprecht Applicant

AC 3211 Standard

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[fol. 244] Q. I believe that in the cases of each of these exhibits, Plaintiffs' Exhibits 4, 5 and 6, there is coverage in more than one state, but that such is not the case in Plaintiffs' Exhibit No. 7; is that correct?

A. That is the accident policy?

Q. Yes.

A. That is correct.

[fol. 245] Q. Are these forms which your company uses substantially the same as are used in like situations where like coverage is desired by other casualty insurance and surety companies?

A. I think these policies indicate in a general way the character of policies issued by the companies generally.

Q. In paragraph 7 of the complaint in this action, reference was made to certain contracts issued in the fiscal year 1937-1938 by your company. At my request, have you ascertained that the total number of contracts there involved was 172?

A. Yes.

Q. As to the complete details of the amount of premium, amount of commission, in what city the producer's commission was paid, and perhaps other things, I believe you are not able to talk as to 22 out of these 172 cases; is that correct?

A. That is correct.

Q. As to the other 150 cases, I understand that the commission paid was between $1,001 and $2,000 in one case, between $501 and $1,000 in one case, between $251 and $500 in three cases, between $101 and $250 in nine cases, between $51 and $100 in seven cases, between $26 and $50 in 19 cases, between $11 and $25 in 20 cases, and $10 or less in 90 cases. Is that correct?

A. That is correct.

Q. Those amounts to which I have referred relate to the Virginia part of the coverage alone, is that correct?

A. That is correct.

[fol. 246] Q. Am I correct in saying that the commission on the Virginia coverage in these 150 cases varied from two cents in one case to $1,595.95 in another case?

A. Correct.

Q. In the two-cent case I believe the total premium was $15,637.69 for coverage in twelve states, of which only eight

cents of that premium was for Virginia coverage. Is that correct?

A. That is correct.

Q. In the $1,595.95 case I believe the total premium was $47,223.62 covering fourteen states. Is that correct?

A. That is correct.

Q. And the first case was a public liability contract, and the second case was an automobile liability contract. Is that correct?

A. That is correct.

Q. In one of the cases to which I have referred where the Virginia Commission was between $501 and $1000, I believe the exact amount of the commission on Virginia coverage was $689.30, that being an automobile liability policy covering in 26 states, on which the total premium was $158,072.93 and the Virginia part of the premium only a fractional amount of that total premium; is that correct?

A. That is correct.

Cross-examination.

By Mr. Staples:

Q. Are those commissions uniform as among all of the [fol. 247] agents, all resident agents, we will say, and all resident general agents?

A. That is on business which they produce in Virginia," if we were to make a contract with the Virginia agent.

Q. You pay them all the same rate of commissions?

A. There are three classes of agents under the acquisition cost rules. There is a local agent who receives the lowest rate of commission; the regional agent, who receives an intermediary commission; and the general agent, who receives the maximum commission. We are limited as to the number of regional and general agents that we may have in the State of Virginia.

Q. Who limits it?

A. The Acquisition Cost Conference.

Q. Is the rate of commission that you pay to each general agent in Virginia, the same?

A. Yes.

Q. Does your company pay the same rate of commissions to all agents falling within the same class?

A. Yes, if in the same state.

THEODORE H. HAAS, being duly sworn, testified as follows:

Direct examination.

By Mr. Christian:

Q. Mr. Haas, I believe you are a licensed attorney-at-law in New York State, a member of the New York Bar?

A. Yes, sir.

[fol. 248] Q. You are connected with the Association of Casualty and Surety Executives?

A. Yes, sir.

Q. What is your capacity there?

A. I am assistant to the Counsel, bearing the title Assistant Attorney, and am in charge of certain phases of the Association's work. Among other things, it has been my duty during the last few years to follow carefully the laws relating to resident agency so far as such laws affect the casualty and surety insurance business.

Q. Will you please state what states there are, including North Carolina, or regulations promulgated under the laws of what states which in your opinion require that the agents who countersign contracts covering but not produced in Virginia receive therefor the usual customary commissions for the production of such contracts and to retain at least 50 per cent. thereof.

Q. I will add to that question this, that I want you to bring out in your answer what states are within that class acting in the light of your own opinion, but also bring out what states are in that class according to official construction and enforcement policy, in other words, to develop the thing for the information of the court in an unbiased way, fairly and accurately.

A. Based upon a reading of many rulings, and during the last few days an examination of the rulings and interpreta-[fol. 249] tions which have been handed down by the Attorney Generals' offices, Insurance Commissioners and other comparable officials in the various states by whatever name designated; based upon an examination of the Weekly Underwriter, which I believe to be the official organ of the National Conference of Insurance Commissioners and a compiler of such rulings and interpretations for many, many years; and a study of the statutes as well as a knowledge of important decisions of the Supreme Courts

and some other lower courts of the states; based also upon the fact that I have been in close touch with problems arising out of division of commissions under resident agency laws of the various states in the United States affecting the casualty and surety business and have seen numerous communications raising problems from our member companies as well as have answered numerous telephone inquiries regarding them; it is my opinion that the States of Louisiana, Mississippi and North Carolina through rulings have raised problems comparable to that involved in the Virginia Resident Agency Law regarding division of commissions, which have been troublesome to our member companies in the stock casualty and surety business.

In the State of Louisiana by a construction of Act 348 and particularly Sections 2 and 6, Laws of 1938, insurance contracts with certain exceptions including personal accident and health insurance on risks on property or insurable activities or interests located in the State of Louisiana shall be issued and countersigned by licensed resident agents who [fol. 250] shall receive the usual commission, and the resident agent is prohibited from paying more than 50 per cent. to an agent or broker authorized in another state.

By the subsequent statute, Act 353, Laws of the State of Louisiana of 1938, which contains the usual or fairly common repealer clause of inconsistent provisions, a resident agent is permitted to divide the commission with an agent of a state or country which permits the payment of brokerage due and division of commissions with a licensed agent of Louisiana in a similar manner, provided such payment of brokerage or commission is made in accordance with such reasonable rules and regulations as may be promulgated by the State Casualty and Surety Rating Commission.

Under this power the Rating Commission has ruled that where under the terms of Act 353 an agent may divide his commission or brokerage with an agent of another state or country, such Louisiana agent may pay to such agent such brokerage or commission not exceeding 50 per cent. of the usual local agent's commission as determined by the Acquisition Cost Conference.

In the State of Mississippi all insurance except life upon persons or property in the state must be approved, countersigned or approved, by a resident agent who shall receive the full commission. Under regulations governing

payment of commissions and/or brokerage by all insurance companies with certain exceptions and/or their local agents promulgated by the Commissioner of Insurance pursuant to [fol. 251] House Bill 546, enacted by the Mississippi Legislature in 1938, Laws of 1938, agents in the state will be permitted to pay an amount not to exceed 50 per cent. of the regular commission to all agents of other states where said agent has participated, so to speak, in obtaining or writing the insurance upon which said brokerage or commission is paid.

There is another provision in the ruling which forbids division of commissions with the States of Arizona, Montana, Oklahoma, Rhode Island, South Dakota, Washington, Wisconsin and Wyoming, for the stated reason that "these said states will not permit division with the agents of this state".

May I point out that there is serious question as to the legal validity of these rulings in respect to whether such power can be constitutionally delegated as a delegation of legislative power and whether the exercise of these powers in Louisiana and Mississippi is arbitrary, and other legal questions.

The State of North Carolina provides by statute that all business done in the State by certain enumerated classes of companies shall be by regular agents or through applications of such agents and all policies must be countersigned by such agents who may pay a maximum of 50 per cent. of the regular commission allowed on premiums collected on such business to a licensed non-resident broker. In a circular letter dated April 24, 1924, the Insurance Commissioner of that State further interpreted this law so that in his opinion the countersigning resident agent must receive the full and usual commission allowed on such business and he may in turn allow to a licensed non-resident [fol. 252] broker not more than 50 per cent. of such commission where the agent is satisfied that the business is controlled by a bona fide licensed non-resident broker and that the Department of Insurance of North Carolina would insist that the resident agent get at least 50 per cent. of the usual commission.

It should be noted that these three states thus dealt with the problem of a non-resident agent or broker producing business on a risk or property in the state. The wordings of the laws vary so far as the division of commission with

a resident agent was concerned. It should also be noted that in respect to the coverage of an application to casualty and surety business, some of these laws may not be as broad as the Virginia statute so far as the division of commission point is concerned. For example, North Carolina mentions fidelity insurance companies but does not mention surety companies, so that miscellaneous surety lines seem not to be covered. It should also be noted that the word "property" has doubtful application to most casualty and surety lines.

Q. Do you want to mention five states other than Virginia, in answer to my original question as to what states have laws or regulations requiring agents to countersign contracts covering but not produced in Virginia, and to retain at least 50 per cent. thereof? Am I to understand in your opinion it is a fact that so far as the laws and regulations and rulings and enforcement policies of the other [fol. 253] states than these five are concerned, such requirement is not made?

A. Yes, sir. In fact, I might venture the opinion that there are really three states—the first three enumerated, Louisiana, Mississippi and North Carolina—in addition to Virginia, in which the situation, so far as enforcement is concerned, is really comparable. I have merely cited the State of Montana and the State of South Dakota in order to indicate possibilities of difficulty for the casualty and surety business in the future. At the present time I believe that such business is being transacted without the difficulty involved in our division of commissions question and the division of commissions statutory requirement of the State of Virginia. At least it seems as though our member companies are able to conduct their business along the usual lines in those states.

Let me call attention to the fact that commissions which might be termed producing commissions are also restricted so far as their division is concerned between agents in the States of Georgia, South Carolina, Alabama, New Mexico and Oklahoma, by rulings or statutory provisions. There are no difficulties, so far as I have been able to ascertain, comparable to those in the other states discussed by me, and this is probably due to the fact that the administrative authority in these states have interpreted their laws so as

to limit their application to transactions involving production within the jurisdiction of the state which would not involve an extra territorial application of the law to the production of business involving a risk or property in the [fol. 254] state by a non-resident agent or broker all of whose activity was conducted outside of and not within the state of coverage.

A. (Continuing.) All of my testimony should be interpreted with the understanding that when I speak of production outside of a state, or non-resident production, or production by a non-resident agent or broker, I have reference to cases where the producer does not come inside of the state of coverage at all.

Cross-examination.

By Mr. Staples:

Q. Mr. Haas, how many of the states require countersignatures of policies by residents of the state?

A. Almost all of the states have some provision concerning countersignature.

Recross-examination.

By Mr. Staples:

Q. Then the only ground that you feel that the countersignature law would be applicable or have value to a state where the business is produced outside, is with reference to its taxing system, as you stated some time ago?

A. No. I believe I mentioned about fly-by-night companies also, and disreputable companies.

[fol. 255] Q. It might also, might it not, serve to inform the assured of the fact that the company in which he receives his policy is a company which has been licensed in the state of coverage, in other words, the fact that the signature is countersigned by a resident agent of Virginia and so shows on its face?

A. I do not think that that necessarily is an indication of the admittance of the company in the state.

Q. You do not think so?

A. No.

Mr. Staples: That is all.

[fol. 256] LEWIS C. ADAIR, a witness called on behalf of the plaintiffs and being first duly sworn, testified as follows:

Examined by Mr. Christian:

Q. Mr. Adair, I believe you are one of the plaintiffs in this action and the Richmond Branch Manager of a plaintiff company, Fidelity & Casualty Company of New York: is that correct?

A. It is. As a matter of fact, I am also Manager of the Atlanta office of the company.

Q. Over what territory do you perform functions for your company?

A. The six states comprising what is generally known as the Southeastern Territory, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, and I still have a small section of southern West Virginia.

Q. I ask you to state the extent of your identification with the Virginia community in the casualty and surety business.

A. I have been associated with the Richmond office of the Fidelity & Casualty Company in one capacity or another since July, 1904, which will be thirty-five years the first of July of this year.

Q. During what part of that period were all of your activities confined to Virginia?

[fol. 257] A. At no time were they wholly confined to Virginia. Until the first of November, 1933, the activities of the Richmond office were confined to Virginia, North Carolina, and southern West Virginia. In 1933 I was also given supervision over the Atlantic office which covers the four additional states and since that time I have divided my time between the two offices and spread myself over the six states.

Q. Do you know of their practices in respect of countersignature activities?

A. I have specific information as respects my own company and, from contact with other company managers, I think I have fairly definite ideas with respect to the general practice.

Q. Please say when an agent countersigns a contract, not produced or written by himself but at the request of the home office of the company or of an authority in another production territory, what does he do, taking it up from the moment when he sees the letter on his desk asking him to do the countersigning?

A. It has been my experience that as a general proposition the agent simply countersigns the policy and returns it unless, as a matter of interest, something prompts him to look at the policy.

[fol. 258] Q. With what object would he have that interest to look at it?

A. To see whether or not there might possibly be any new forms or methods of cover that might be useful to him in handling his own business.

Q. How many casualty and surety contracts, as a guess, would you say you have countersigned in your lifetime?

A. That would be hard to say because I have been countersigning policies for at least twenty-five years, but during the past year it would average something like 100 a month.

Q. Does the countersigning agent ever write the policy himself, he not being either the producer of the policy or associated with its production in the sense of receiving any part of the production commission?

A. I would say the countersigning agent never issues the policy in his office unless he is to be associated with the out-of-state producing agent and participates in the commission.

Q. Am I right then, if his sole function is that of affixing the countersignature to the policy, he never writes the policy?

A. He does not write the policy if his sole function is to countersign it.

Q. Having reference to his countersigning function only is there usually provision made by the company or the for-

[fol. 259] warding authority for him to retain a copy of the original contract and to receive copies of all contract changes?

A. If the agent's sole function is countersigning, he is never sent any additional copies or daily reports or endorsements for retention in his office.

Q. Will you please say whether the Virginia agent, countersigning at the request of an authority in another state, has means by which to discover whether the name of the assured is correctly stated or whether the coverage contained in the policy is as desired by the assured?

A. I would say not with definiteness. As to the name of the assured, very frequently the details or the legal name of the assured may be entirely different or vary considerably from a name by which the plant is locally known and, as respects the coverage, as often as not the agent would

not be able to tell with definiteness whether the coverage was wholly accurate and complete unless he had means of having detailed knowledge of the operations covered.

Q. Would those means exist on the face of the policy?

A. Not necessarily.

Q. Would he be able to determine ordinarily, in the case of policies so submitted for countersignature, whether the premium rates stated there were correct?

[fol. 260] A. As often as not he would not be able to do so unless he had inquired of the company as to any experience or equity rates which might have been published for the risk. He could, of course, check rates against manual but on large risks, more often than not, the rates for individual risks vary from the published rates for average risks of that type.

Q. Suppose there should be inadvertently attached to the contract, or inadvertently omitted to be attached thereto, riders and special provisions; could he tell from looking at it whether they were advertent or inadvertent?

A. I don't see how he possibly could.

Q. Who has the responsibility for all of these matters as to which, from your answers, I judge the countersigning agent could not efficiently undertake to exercise responsibility?

A. The agent who actually has contact with the assured and takes from the assured the information and order for the policy.

Q. Where a contract is produced in another state than Virginia and countersigned in Virginia, who usually spends the greater amount of time in connection with the placing of that contract, that is to say, its procurement, writing, countersigning, delivery to the assured—the Virginia countersigner or the non-resident producer?

A. The non-resident producer is the man who works up and whips the case into shape and the Virginia counter-[fol. 261] signer merely countersigns. It is a foregone conclusion that he will probably put infinitely more time on it than the man who merely countersigns.

Q. Which one of those two in that situation needs to have more information as to the casualty insurance or surety business in order properly to discharge his duties?

A. The man who procures the business.

Q. Is that discrepancy large or small?

A. For a substantial risk it would be very large.

Q. Which of the two incurs the greater measure of responsibility?

A. The man who procures the business.

Q. Does the Virginia countersigner in that situation ever form any contact with the assured in the course of performing his countersigning service?

A. No.

Q. Would it have any effect on the difficulty of getting these contracts, which a producer outside of Virginia procures to cover in Virginia, countersigned by a Virginia agent, if the Virginia agent had to make certain, before he furnished the countersignature, that the proposed insurance contract was bona fide and that there was no intention to discriminate or to rebate or to give the insurance without charging any premium for it?

A. It necessarily would as it would place on the countersigning agent responsibilities and require of him the ex-[fol. 262] penditure of time and effort which is not required if his sole function is to countersign.

Q. It was suggested in a deposition by Mr. McNamara that the branch offices of the casualty insurance and surety companies had regulations for the operation of the branch offices, which regulations were promulgaged by the companies and from time to time supplemented and amended by them. Do these regulations state the duties and responsibilities of the branch manager personally?

A. They do not.

Q. Please say what are your duties and responsibilities as Richmond Branch Manager of your company?

A. In our organization the manager's duties are primarily production. He is the head of the company's production organization in his territory, which includes the direction of the special agents in the territory, traveling and contacting agents themselves, and doing general work of that nature, calculated to build up the company's business in the territory, either through the production of business through existing agencies or the production of business through the acquisition of new agency plants.

Q. Is it true or false that the underwriter in your office has leave to submit doubtful underwriting questions to you [fol. 263] and is ordinarily guided by your views?

A. It is true that he does.

Q. Do you have anything to do with the claims or inspection services of your company?

A. Both the claims division and engineering division are under direct control of the engineering and claims divisions in the home office.

Q. Do you have any responsibility for auditing or accounting?

A. Auditing and accounting are also both directly under those respective departments in the home office.

Q. Is the measure of your success as a branch manager, according to the standards applied by the company, affected by the volume of contracts written solely in your territory?

A. The manager's success is judged by two standards—the underwriting results on his business, that is whether it is carried at a profit or a loss, and the nearness of his approach to keeping his overall expense within a figure determined by applying the total allowable acquisition cost to his volume and his actual expenses.

Q. Is the company concerned with whether the volume is large or small? In other words, would you be considered just as successful in the Virginia territory if you had $100,000 of premiums per year as with your present volume of [fol. 264] around $500,000 per year?

A. A volume of $100,000 a year would not support the office. The company is, of course, interested in the extent of the volume. They naturally are not willing for a man to go volume crazy to the extent that he writes all sorts of business, without regard to the underwriting results but, at the same time, he would probably be in as deep water if he was so careful of his underwriting results that he got the volume down to a point where it wouldn't carry his organization.

Q. Suppose he got the volume down to a point where it wouldn't carry his organization, as a result of being unpleasant to the sources of business in his personal contacts with them, or not showing the proper interest in their affairs, not giving them what they regarded as a proper amount of time and due consideration when they undertook to bring up their insurance problems with him and discuss them, would that similarly decrease the esteem in which he is held by his company?

A. The result would be the same. He must produce what is a reasonably satisfactory volume from his territory or he is doing an unsatisfactory job.

Q. It has been suggested, that because you are compensated by salary you do not have to bother as much as a commission man would about keeping the good will of the as-
[fol. 265] sureds. Will you please say to what extent you think this suggestion is a sound one, if at all, and compare the extent to which the good will of assureds is material to a branch manager and the extent to which it is material to a general agent?

A. I would say that there is very little difference because, after all, good will is essential to success in our business and without it you can't expect to enlarge your business or even hold a present satisfactory volume. As a matter of fact, in my own particular territory I have personal contact with the majority of the most important accounts on the books of our most important agents. So I have had the opportunity to build up some good will for the company and the agency through those contacts and I don't believe that I would any more think of doing anything that would jeopardize that good will, or could afford to do anything that would jeopardize that good will, any more than could the general agents who might be handling the same account.

Q. Have you ever been brought in contact with those assureds, at the request of the agents in your territory, to confer with them or to advise them?

A. Very frequently. Within the past thirty days I have made two trips at the request of agents to, in each case, call on the assureds who represented the most important ac-
[fol. 266] counts that they had in their respective offices because they felt that they were in danger of losing those accounts and that I might be of assistance to them in retaining them. As a matter of fact, a considerable part of my time is devoted to efforts of that sort.

Q. Are you ever called on by your agents to assist them in getting the final assent of an assured to take a line of business with your company and help them put the job over and deliver the contracts?

A. That is a very important part of my job.

Q. And you mean you are personally present at those conferences at times and actually close the deals?

A. Yes.

Q. Is it also a part of your duty, with the assistance of your clerical force, to determine the contents of policy pro-

visions and assist in getting the rates determined and to generally take part in the underwriting?

A. Yes.

Q. What part of the business of a casualty insurance and surety general agent, aside from the countersigning which the 1938 Virginia Law prohibited you from continuing to do, is it, if any, that you don't do now?

A. Substantially nothing.

[fol. 267] Q. You don't know of anything that a general agent does that you don't do?

A. No.

Q. Do you ever have occasions, when the claim people of your company are adjusting a claim and a question arises as to the liberality of the policy of adjustment, that you are called on to take part in the discussion of it and advise with them?

A. Very frequently.

Q. Would you say that in those situations you are expected to take an attitude more nearly approaching that of the agent in the field or more nearly approaching that of a person disassociated from the salesmanship end?

A. I am expected to approach it with the attitude that would be expected of the head of the production division, to consider the possible effects of what may be done on production.

Q. Speaking generally, is the outline you have given of your duties and attitude and responsibilities substantially in accord with the way you would outline the attitude and duties and responsibilities of other branch managers in Virginia?

A. That is my impression.

Q. I notice in Plaintiff's Exhibit No. 3-A that there is no authorization, with reference to the sur-ty bonds, for the [fol. 268] execution of bonds. Where an agent has authority to execute surety bonds, in what form is the authority conferred?

A. In a general power of attorney which is, of course, a separate and distinct instrument from his contract as agent.

Q. Is that practice of having a power of attorney for the execution of surety bonds a practice with other companies than your own?

A. Yes.

(Mr. Christian and Mr. Staples agreed that Mr. Christian might put in evidence, as Plaintiffs' Exhibit No. 8, what purports to be the form of agency agreement currently used by the Travelers Insurance Company, with a rider attached applicable to certain Virginia commissions, and later hand to the notary public, to identify as Plaintiff's Exhibits Nos. 9 and 9-A, a general agency contract form and a local agency contract form of Maryland Casualty Company, without witnesses being presented to identify the forms as so used.

Q. Will you say the usual thing for mere agent producers, as distinguished from general agents or branch managers, is to have authority, either express or implied, to bind their companies on casualty lines?

A. Yes.

[fol. 269] Q. Do agent producers usually report to the general agent or branch office or do they usually report to the home office of their company?

A. With branch office companies they almost invariably report to a branch office. With general agency companies they are as likely to report direct to the home office as to a general agent because there are comparatively few general agents who undertake to supervise and develop territories which, of course, means to plant and develop local agents.

Q. Do agent producers usually have their office space and services and supplies furnished to them by one or more companies so that their commissions represent net earnings to them or do they usually have to pay their own expenses of that sort out of their commissions?

A. They are quite generally furnished with their supplies by their various companies, including stationery and that sort of thing. Their office rent and that sort of expense comes out of their own earnings. Their commissions are not net earnings.

Q. I believe, however, that the class referred to as office agents in Plaintiffs' Exhibits 1 and 2, consisting of the acquisition cost rules, do have these services and supplies furnished to them by the companies, do they not?

[fol. 270] A. Quite generally the office agents' commissions are net earnings and subject to little, if any, expense.

Q. Among the various companies there is a considerable variation in the proportion of agent producers who are on their own as local agents and who are office agents, as, for

instance, in the case of your company here in Richmond, I believe, you only have one office agent, whereas the Travelers has many; is that correct?

A. That is correct. There are only two companies, so far as I know, operating in Virginia, who have any extensive office agent plants and they are the Travelers and the Ætna.

Q. If an agent producer reports to a branch office or general agent, is my understanding correct that the branch office or general agent may furnish him with an office and office services and supplies and then again may not; is that correct?

A. Local agents, as distinguished from office agents, are, so far as I know, not furnished with office space and that sort of thing.

Q. In comparing the branch manager to a general agent, you have indicated that there is a substantial identity of duties and functions and responsibilities. Is the same true as between the branch manager and the mere agent producer or do you find sharp differences of duties, functions [fol. 271] and responsibilities between the branch manager and agent producer?

A. There is a very considerable difference. Almost invariably your agent producer is doing a direct business for his own account. The great majority of the agent producers are located in the smaller cities and towns. They are there working solely with their own customers and prospective customers. The branch manager is working largely through agent producers of that type as distinguished from working directly with the insurance public for his own account.

Q. I believe it is a fact that Davenport Insurance Corporation and the Charles Lunsford Sons Roanoke agency are your leading general agents in Virginia, are they not?

A. They are.

Q. Are those agencies general agencies, in the sense in which you have compared their functions and duties and responsibilities with those of branch managers?

A. To a degree. Both of those general agencies have some few sub-agents. Neither of them, however, assume responsibility for the development and production of business from any territorial area for which they are responsible.

Q. Do you mean for which they are responsible to your company alone?

A. To my company alone.

Q. Do you know how many casualty and surety companies Davenport Insurance Corporation represents?

[fol. 272] A. I know at least five. How many more I could not say.

Q. Are those four others than yourselves companies writing the same business as you do, generally speaking?

A. Yes, with the exception of the National Surety Corporation which does not write all of the casualty lines.

Q. How about the Lunsford agency? Does it represent more than one casualty and surety company?

A. They represent at least five.

Q. Having reference to so-called general agents in Virginia, and without particular reference to your two which we have mentioned, is it more frequently the case that they represent, in the large cities, more than one company or more frequently the case, in your observation in the larger cities, that they represent only one competing company?

A. The quite general practice now is to represent more than one company. The agency which represents one casualty and surety company exclusively is now more the exception than the rule.

Q. Do these so-called general agents have any definite territory where they represent more than one company?

A. Our own practice is to show the agent's territory as the given city in which they are located, and vicinity. I [fol. 273] am not in position to say just what the practice of other companies may be in that respect.

Q. But their rights in the territory under your practice are never exclusive?

A. Never exclusive unless it be specific agreement and we have no such case in this state.

Q. Do these so-called general agents as a rule write business only like a branch manager does, by way of assisting producing agents or assisting brokers, or do they do what I believe Mr. Staples called on one occasion direct writing?

A. I, of course, am not in a position to make a definite statement as to the percentage of the average general agent's business which would be direct business and the percentage that comes to him from brokers or sub-agents, but there is hardly any question about the fact that in substan-

tially every case in the state the great bulk of the business would be direct business excepting in the case of the three agencies in the state which operate on a truly general agency basis. That is the bulk of their effort, to develop territory and develop sub-agents. So far as I know, however, there are only three such agents in the state.

Q. Then the main difference between these other so-called, but not real, general agents and the agent producer is [fol. 274] simply a matter of commissions, is it not?

A. A matter of commissions and the so-called general agency is almost always located in a larger city so that they have a larger volume and a more extensive organization.

Q. In an answer that Mr. Nichols gave on Page 10 of his deposition to the question of whether a general agent has the same powers and duties as to underwriting as a branch manager, he says that he would say that the general agent, to almost the same degree, has the same powers. Having reference particularly to the Virginia situation and comparing underwriting powers of general agents and branch managers, should that word "almost" be in there or are they identical, according to your observation?

A. I would say that insofar as underwriting is concerned, there is no difference, with the probability being that the general agent might be justified in taking a little more latitude than a branch manager might be willing to take. Both of them, however, are subject to review by the home office.

Q. On page 15 Mr. Nichols indicated that if an authority outside of a particular state requests the agent of a particular state to countersign a contract, and if that authority is on a list in the possession of the countersigning agent, of those people who are authorized to request countersigna- [fol. 275] ture, it is the duty of the agent requested to furnish the countersignature to proceed to furnish the same. Please say whether that is true as to salaried agents or to both salaried agents and commission agents, according to the contracts of your company with its agents?

A. I would say that as respects a salaried agent, it would be a duty. As respects a commission agent, it would be entirely optional as our contracts impose no obligation on our commission agents to furnish such services when requested to do so.

Q. Are you able to explain why in automobile lines in Virginia a lower commission is paid than on those lines in other states except possibly in Massachusetts?

A. Yes. The automobile rates are built up of some four or five items, including the pure premium, which is the amount that is figured will be required to pay the losses, the load for claim expense, the load for office expense, the load for taxes and the load for production cost.

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A. In the make-up of the Virginia rate the amount of load permitted for production cost is five per cent less than the load that goes into the rate for production cost in all other states excepting in Massachusetts.

Q. That rate resulted from proceedings before the State Corporation Commission and negotiation with the State [fol. 276] Corporation Commission, did it not?

A. It did. The Corporation Commission will not permit the companies to load Virginia rates for more than twenty percent production cost, while the country-wide production loan on automobile business is twenty-five percent.

Q. Who countersigns contracts for your company in Virginia?

A. Either myself or my principal assistant in this office, Mr. Eitel, where the business is referred to the Richmond branch office.

Q. Do you countersign contracts produced in Virginia as well as contracts produced outside of Virginia?

A. Very frequently.

Q. What are the circumstances under which you do that?

A. Very frequently one of our agents will have a customer coming to Richmond to get license plates for a vehicle of a type which requires filing with the Corporation Commission of a liability policy, or will come to Richmond in connection with some public works contract on which evidence of insurance must be supplied before the contract will be signed. The agent will direct that customer to come to our office and arrange his insurance. We provide him the policies immediately, countersign them, he goes ahead with [fol. 277] the P. W. A., or the state department, or whatever body it may be that he has to satisfy as to his insurance coverage, while we send to the agent, whose customer he is, copies of the daily reports and complete information on the transaction for the agent's records. We very frequently also perform those same functions for an agent where a customer has been out to look over highway work on which the Highway Department is to receive bids where the contractor will come straight to Richmond to make up and

submit his bid without going back to his home town, with the result that he does not have an opportunity to see the agent and procure bid bonds on such work as he may determine to bid on. In those cases the agent directs the contractor to come to us and secure his bond which, of course, necessitates our supplying the signature.

Q. In those cases is the contract written here in your Richmond office?

A. Yes. Incidentally, I referred to the Highway Department. It applies to other state departments but not to the Highway Department. Those bids are now altogether with certified checks.

Q. In those cases do the agents at Orange or Suffolk or Newport News or Roanoke, as the case may be, receive either the agent producer's commissions or the general [fol. 278] agent's commissions just as they would have if they had written the contracts and countersigned the same?

A. They receive exactly the same commissions as though the entire transaction had been handled by themselves.

Q. Would it subject those men to inconvenience and increase sales resistance and subject their assureds to troublesome and perhaps costly delays if you were not able to continue that practice and if you should not be able to continue that practice?

A. As a matter of fact, we had several rather embarrassing situations develop along exactly that line during the period between the date when this new law became effective and the date on which the injunction was granted.

Q. I believe it would be fair to say that most of the countersignatures furnished by you and your assistant are on contracts produced outside of Virginia and covering in Virginia, is it not?

A. I would say yes.

Q. How does it hurt for your right to furnish countersignatures to be cut off from you by this 1938 Virginia Act?

A. It hurts me in that I am supposed to run my office on the difference between the producer's commission and the total acquisition cost which is the normal general agent's [fol. 279] commission. The necessity for paying additional commissions for securing countersignatures in Virginia cannot but have the tendency to increase the cost of carrying on the company's operations in Virginia. It further puts us in a position of not being able to service our Virginia agents as effectively as we can where we are in position

to furnish them with countersignatures in Richmond on business in connection with which they need that service.

Q. I see that those things are very injurious to your company but all of these losses fall on the company rather than you. How does any of that loss reach you?

A. It reaches me because my expense of operation is taken into consideration in judging my worth to the company, as well as the loss ratio on my business. After all, there are only one hundred cents in the dollar out of which we must pay losses and all operating expenses which include commissions, and anything that has a tendency to push my expense ratio up naturally has a tendency to reduce the profits on the operations from my territory and, to that extent, reduce the value of my services to the company. If they must pay someone else to do something that I have for years been doing for them, it would seem but natural [fol. 280] to assume that my services are worth somewhat less to them than they were at the time that I was able to perform the service that they must now pay someone else to perform.

Q. Supposing that the company you represent has $60,000 in premiums per year produced outside of Virginia but which are premiums for strictly Virginia coverage on those contracts produced outside of Virginia; supposing that the commissions for the production of that business were $6,000 or $7,500 and the company had to still continue to pay those commissions but, in addition, had to pay from $3000 to $3750 to get Virginia countersignatures on that business; do you mean to say that you would have to save that amount out of other expenses of your office here in order to make the result of your stewardship here in Richmond as acceptable as it previously had been.

A. If you increase your expense $3000 to $3750 in one place, you have either got to reduce it in some other place or your expense ratio is up to that extent.

Q. Do you think that in the long run that factor will be felt on your salary?

A. It might very reasonably be.

Q. In the 1938 Virginia Act there is a reference to state agents. In your knowledge of the casualty and surety business, is there any such office or title used in Virginia? [fol. 281] A. Not in the casualty and surety business. That is a fire insurance term.

Q. Where claim services are furnished from a general agent's office, who pays for them? For example, in the Lunsford office who pays for his man McClellan?

A. The several casualty companies represented in the office each make payments toward that salary.

Q. Who pays for Ganzert, the claim man in Davenport's office?

A. Globe Indemnity Company.

Q. Do you happen to know who the claim man in Roanoke for your company receives his directions from and from whom Ganzert receives his directions?

A. The claim man in the Roanoke office, as respects Fidelity & Casualty Company claims, is under the direction of the Claims Attorney in our Richmond office. I understand or am told by members of the Davenport agency that their claim man is under the direction of the Claim Department of the Globe Indemnity Company.

Q. Do you have knowledge of any conditions under which assureds are truly consulting the best interests of their stockholders in placing their business covering in Virginia through agents and brokers in other states?

[fol. 282] A. It has been my experience in such contacts as I have had with large buyers of insurance, located outside of this territory, as well as those located in the territory, that the motive behind their selecting one large brokerage house or agency to handle all of their business has been that they felt that there was definite advantage to them in so placing their insurance in order that they might have one agent or broker whom they might hold responsible for the proper handling and placing of the business and have that agent or broker situated in their home office town so that he, or a representative of his office, would always be available for consultation or advice in connection with their insurance problems. I found that true of quite a number of substantial risks in my own territory, including some in the city of Richmond, and in connection with an agency which holds itself out as general insurance agents and brokers.

Q. Do you find people with headquarters in Richmond or Norfolk or Roanoke and other large centers, but with casualty insurance and surety risks in other parts of Virginia than the locality of their headquarters, who seem to prefer to deal with one agent as to all of their insurance and surety

matters in the locality of their headquarters instead of scattering their business throughout the cities and counties of Virginia?

[fol. 283] A. It is a general practice to place business through one channel from headquarters, though not infrequently, where the business is of a nature that it is felt good will will be engendered through permitting local managers to place business locally, to permit, in some instances, business to be placed locally for that reason.

Q. By a local manager of the assured?

A. Yes.

Q. Do you also encounter cases sometimes where the business is produced outside of Virginia where, for some reason, the assured has told his non-Virginia broker or agent to associate a Virginia agent with him and share the commissions with him?

A. That quite frequently happens, particularly in businesses which are particularly sensitive to public relations as, for example, public utilities.

Q. Was that going on before this 1938 Act became effective and because assureds thought it was in their interest to get that local good will or service or has that just come into being since this 1938 Act became effective?

A. Cases of that sort have not been affected at all by the 1938 statute as the reason for doing it existed before the statute was passed and it was done before the statute was passed.

[fol. 284] Q. Does your company throw any obstacles in the way of that being done in the case of all its business being produced outside of Virginia if the assured wanted to do it?

A. We would prefer it being done.

Q. Having reference not to New York brokers but to out-of-state agents and brokers generally, have you recollection of occasions when any of them have come into your territory seeking better to inform themselves as to the problems and situations of the assured in order to write insurance contracts for him?

A. Yes. It is the practice of the larger brokerage houses, with their very large lines, to periodically have the risk inspected by some of their own people.

Q. Would you say that it is not an occasion of any particular comment, because of the frequency of its occurrence, when some non-resident agent or broker has personnel representing his office come into Virginia?

A. I would hardly be able to make any statement as to the frequency with which it is done.

Q. But do you recall occasions when it has occurred?

A. I do know that it is done, yes.

Q. Mr. Nichols was not able to say, at Page 95, whether brokers have offices in the south. Please state, as to your six states, what is the situation in that regard now and formerly?

[fol. 285] A. So far as I definitely know, there is at this time no brokerage house in any of the metropolitan centers having offices in Virginia: I am rather definitely under the impression that there are one or two in Atlanta and, at least during the season, there is one, and I think two, that maintain offices in Miami. Marsh & McLennan at one time had an office in Richmond but they discontinued it a number of years ago. They also have offices in New York, Chicago, Detroit, Pittsburg, Philadelphia, Cleveland and perhaps elsewhere.

Q. Perhaps unfairly, I attributed to Mr. Staples the implication that Virginia citizens and Virginia corporations would give no business to Lloyd's Associations. Can you say, as a matter of fact, whether in your six states, including Virginia, that is true?

A. There are at least two of the most substantial banks in Richmond who are at this time carrying their blanket bonds in Lloyd's and I know of at least a half dozen other large banks within the territory under my supervision who also carry their blanket bonds in Lloyd's. I have seen it estimated that Lloyd's takes as much as from two to three hundred million dollars annually in bond premiums out of the United States.

Q. There has been some intimation that the way these non-resident brokers and agents get this business away [fol. 286] from the Virginia agents, even though the business covers in Virginia, is that they are guilty of unethical practices such as, for instance, making an arrangement between the company and the assured and the producing broker or agent as a result of which the premium is reduced by an amount by which the producer's commission is reduced. I ask you whether it is a fact or not that in these cases the premium rates and the reduced amount of producer's commissions thereon are ordinarily filed with the appropriate bureaus and whether the record of what actually took place will be furnished upon the inquiry of any interested competing agent or company?

A. There are many types of casualty business which are subject to special rating. In that special rating plan, as in all rating plans, there is a specific load for acquisition cost. In such cases the acquisition cost can be set at whatever figure is satisfactory to the interested companies provided it may, in no case, exceed the maximum acquisition cost. Not infrequently in the make-up of these special rates an acquisition cost is loaded into the rate which is materially less than the normal acquisition cost. When such special rates are promulgated the acquisition cost which has been loaded into them is promulgated with the rate and that rate, subject to that acquisition cost, is available to any [fol. 287] company or its representatives upon request therefor from the bureau.

Q. There was an intimation in a question of Mr. Staples that the automobile insurance contracts of the mutual companies had provisions in them subjecting the assureds to assessment. Is that so as to the Virginia contracts of the larger mutual companies?

A. It is not true of many of the mutual companies doing business in Virginia as the state permits the issuance of non-assessable policies by mutual companies who meet the statutory requirement in that respect.

Q. There are many large lines of casualty insurance, such as workmen's compensation, automobile liability, public liability, and the like, where the insured has no particular interest in what you pay to the claimant, are there not?

A. Yes, that is generally true of all third party insurance.

Q. If he has an interest it would be that the payment should be small for its ultimate effect on his rate rather than it should be unduly liberal because that would have an ultimate effect of raising his premium rate; is that right?

A. That is particularly true of an assured having fleets or risks which are large enough to be subject to individual experience rating so that their individual experience is reflected in their individual rates.

[fol. 288] Q. Am I right then that if, instead of a New York man having produced that business, some Virginia man had produced it, and he used his good offices to make the company pay out more than was perhaps clearly right under one of these contracts, he would be hurting the assured ultimately rather than helping?

A. Certainly, as respects a risk that is large enough to be individually experience rated as all losses are directly reflected in the assured's premium rate.

Cross examination.

By Mr. Staples:

Q. Mr. Adair, about what percentage of the time do you spend in your Richmond office?

A. Probably in the neighborhood of twenty-five percent.

Q. You spoke of countersigning contracts and what the countersigner does in connection with that. Did you have reference to countersignatures which might be given by resident agents as the statute defines them under the Virginia statute, under circumstances where they receive at least fifty percent of the commissions, or did you have reference to countersignatures in your own office?

A. As respects service the agents might render?

Q. Yes.

[fol. 289] A. I would say the circumstances would be substantially the same whether they were countersigned by us or by the agent.

Q. That would be your opinion?

A. Yes, sir.

Q. Have you ever had any experience with any resident agents who have signed these contracts and have gotten that part of it and didn't render any service?

A. Yes, sir.

Q. Who was that?

A. Davenport Insurance Corporation countersigned several such items. Lunsford's office in Roanoke, I think, countersigned several. Mr. Shackelford here in Richmond countersigned several.

Q. You say that they did not render or have not rendered any service at all in connection with those policies?

A. No, sir, not called upon or requested to.

Q. How do you know whether they have done it voluntarily or not?

A. I just know——

Q. You are assuming that, aren't you, Mr. Adair?

A. That it is highly improbable that they would have without our knowing it. They have no record of the business except such record as is necessary to enable them to see that they are paid the countersigning fees which are due on the items.

[fol. 290] Q. Was that business of your company that they countersigned?

A. Yes, sir.

Q. How do you know what record they may have made in their offices when they countersigned those policies?

A. In the case of Davenport, the bonds were taken into their office and countersigned and immediately taken to the Highway Department and filed and we subsequently sent them the information necessary for them to record them for accounting purposes.

Q. And they did have a record of the transaction covered by it?

A. They knew it was a contract bond for a certain date for a contractor of a certain name, carrying a certain premium.

Q. Did they know what risk you carried?

A. They had no detailed record of what project was covered by the bond. For their purposes it was unnecessary that they have that.

Q. Did they know that, I mean?

A. They could ascertain it from the Highway Department if they wished to but they made no record of it at the time.

Q. So the only reason you have for stating that they have not rendered any service is because you don't think they had any information in their office which would enable them to render it; is that correct?

[fol. 291] A. And because it would be wholly contrary in the practices of the business for them to do so.

Q. When was that practice established?

A. During my thirty-five years in the business.

Q. How long during that time or how many instances during that time that you know of had these resident agents been receiving as much as fifty percent of the commissions?

A. Only since the enactment of this statute but it has never been customary for resident agents in this or other states to contact assureds on business they countersign for other agents unless it is in agreement with the producing agent.

Q. Have you ever known of any resident agent in Virginia to countersign prior to the enactment of this statute?

A. Oh, yes, sir, we very frequently have business sent us by non-residents where we are requested to have the

signature supplied by an agent in the vicinity of the risk so that if the assured needs local services he can secure them on request. That almost invariably involves personal lines of insurance as distinguished from business risks.

Q. In instances of that kind does the local agent get any of the commissions or not?

[fol. 292] A. Yes, sir, that is generally a matter of agreement between the local agent and the non-resident producer as to the extent of participation the local agent shall have.

Q. As to what service the local agent rendered in those particular cases, of course you don't know anything about that, do you?

A. No, sir. If there happened to be losses under the policy, he might render very valuable services. If there are no losses, the chances are he would have no contact with the risk until it comes up for renewal again, but people are more inclined to want local service on their personal lines than a large, well-organized business organization on insurance covering risks of that type.

Q. How many local agents do you have in Virginia?

A. About eighty-five, I think, at the present time.

Q. Are they competent, most of them?

A. Competent, yes, but you have to bear in mind when you use that word that a man's efficiency in our business is, to a very great extent, limited or determined by his opportunities to handle business of our class. You take in the average town, we will say, of four or five thousand, an agent in that town, for example, may have one or two steam boiler policies on his books. A man can't handle that limited amount of insurance in a given line and be thoroughly [fol. 293] familiar with that line, nor can he be expected, in connection with a business from which he has no more income than he would have from that business, to take the time and effort that would be involved in keeping up with the numerous manual changes affecting that business, with the result that the average agent in a town of that size, while he may be right on his toes on his fire business, which will make up the bulk of his business, may have a fair working knowledge of the general run of automobile business, but when you get him into the lines in connection with which he has little opportunity to write any appreciable volume, he just can't keep up with the changes that are continually taking place in the casualty business. You see our business

is much newer than the fire business. It is much more subject to change. As a matter of fact, we have in our own organization and the larger city agencies—for example, the Davenport Insurance Agency here in Richmond has a sufficient volume that they have different individuals in their agency who specialize in the different lines in order that they may keep abreast of these changes that are being made all the time and you just can't expect your average run of agent in a town of 5000 or 10,000 population to have the opportunity to handle the volume to keep himself expertly posted.

Q. You think, however, in the fire business that they would be able to do this?

[fol. 294] A. The fire insurance business is fairly standard. You have got a standard policy on a residence risk and you put certain endorsements, which are more or less standard, on it. On the mercantile risk you put certain endorsements which are more or less standard and the bulk of a small or moderate sized town agency's business is made up that class of business.

Q. I gather that you think the local agent in those cases would be fairly competent to handle any situation that would arise; is that correct?

A. Yes, sir, and it is quite the general practice in the fire business, excepting where policies are written under blanket —what they call I. U. B.—forms which are blanket forms covering many locations in possibly many states, for the business to be directed to the local agent. That has been the practice in the fire business for years.

Q. Going back to the question of these countersignatures, what experience have you had prior to the enactment of this statute with countersignatures by resident commission agents who did not receive any compensation therefor?

A. You mean as respects my own company?

Q. Your own company, yes.

A. Such countersignatures were quite generally furnished by salaried employees. Of course, as respects such countersignatures, there was no question of compensation.

[fol. 295] Q. I asked you with reference to resident agents. You testified about the custom as to what service these resident agents would render where they merely countersigned the policy. Now I am asking you what experience you have had with reference to any such practice as that?

A. It has been my experience, excepting where there was a specific agreement between the non-resident producer and the resident countersigning agent that the resident countersigning agent was to furnish some service for which he would receive a participation in the commission, that the resident agent did nothing but supply the countersignature and, more often than not, made no record of the transaction.

Q. Did he ever countersign at all under those circumstances?

A. Yes.

Q. Why would he do it?

A. Not infrequently, for example, an agent in North Carolina would know an agent in Virginia and, on a policy written in his own office, would send that policy to an agent in Virginia.

Q. What makes you think he didn't compensate him for it?

A. I have had them tell me so many times.

Q. That is the only knowledge you have?

A. That is the only knowledge I have, yes, sir.

[fol. 296] Q. And he countersigned then as an accommodation to a friend of his in another state?

A. Yes, sir.

Q. That was just an exchange of courtesy?

A. Yes, that was rather a common condition to find, particularly in border towns.

Q. But it has been a practice, I believe you said, in some cases where a non-resident broker or agent felt he would like the cooperation and help and assistance of a local resident agent, to request a local man be associated with him in the contract? I mean a local commission agent.

A. Yes, sir.

Q. What was the reason for that?

A. Because of a feeling in connection with that particular piece of business that it might be advantageous for the assured to have some local man available that he could call on in the event he needed some service from him.

Q. And in cases of that kind it was customary to divide the commissions on some agreed basis?

A. Yes, sir.

Q. But there has never been any general practice, has there, which would enable you to speak from experience of resident commission agents countersigning contracts in which they did not participate in the commissions?

[fol. 297] A. Yes, sir, in those cases that I just mentioned.

Q. I am speaking of the general practice. I don't mean a few isolated cases where border towns are involved. I mean the general practice prevailing out over the state?

A. No.

Q. Of course, I understand in isolated cases where friendship, or something of that kind, would invoke a courtesy that it might be done but I am talking about the practice itself. There has been no such practice?

A. There has been no such practice except among agents who have a good deal of interstate business and make what they term a reciprocal arrangement.

Q. And they get a resident local agent to countersign principally for the reason that it is more convenient than sending it in to the home office?

A. Yes, sir. For example, you find such conditions existing in towns like Suffolk where they are close to the North Carolina line and I recall our agency in Suffolk had an agreement with an agent in Sunbury, North Carolina, which was just over the line, and they sent policies back and forth as a matter of reciprocity.

Q. What service is there that should be rendered which one of these local agents of yours is not able to render with reference to boiler insurance?

[fol. 298] A. Well, there are comparatively few agents in the smaller towns and cities who could give a man a rate on a boiler if he asked him for it. For that reason the great bulk of the boiler and machinery business, and the other casualty lines that are not as well known as automobile business covering individual cars, for example, is produced with the assistance of company representatives. As a matter of fact, the primary function of our special agents is the production of business through local agents.

Q. Do I understand that your company declines to provide its local agents with information as to what the rates are on boiler insurance?

A. No, sir, we are delighted to furnish it to them and to furnish them with manuals and, at some expense, see that they are sent reprinted pages of the manual which probably come out at the rate of an average of twenty-five a month but which ninety per cent of the local agents never put in their manuals because they have so little of the business that they just don't keep their manuals and files up to date on it.

Q. That boiler insurance is a very small part of the insurance business of the state anyway, isn't it—that is, generally out in the territory?

A. Relatively, yes, sir, but on the other hand it is generally the part of an insurance line of every manufacturing plant which means that they have to have service on it even [fol. 299] though their boiler premium may not represent ten per cent of their total insurance premiums.

Q. Don't you think that your agents are competent enough to get that information if they had a risk of that kind in their territory?

A. I know that the vast majority of the business that comes to us from those agents comes to us in the form of a request that we give them assistance in lining up and procuring the business for this prospect that they have.

Q. They get it, though, don't they?

A. They get it with the assistance of the company field man, yes, sir.

Q. That is what your company field man is there for, isn't he?

A. Yes, sir.

Q. And that is part of the legitimate conduct of the business, isn't it?

A. Yes, sir.

Q. And with that help which your company provides to all resident agents and also to brokers and everybody else in that business, these people are just as well equipped, with that assistance, to handle it as anybody else, aren't they?

A. Yes, but they cannot handle it as expeditiously or as satisfactorily as a large and well equipped office.

[fol. 300] Q. Is it not true, Mr. Adair, that with reference to all lines of risks carried by your company, there are located in the cities like Roanoke, Lynchburg, Norfolk, Richmond, Danville and Staunton, agents who are thoroughly conversant with the business and are able to render any type of service in the territory contiguous to those cities?

A. Yes, sir. If we could just get all of our agents like Davenport, Lunsford, Garnett Tabb, or Gibson, Moore & Sutton and agents of that type, we would probably have little use for field men.

Q. So that there is really no necessity for a New York broker?

A. Not in those cities.

Q. Well, the New York broker does very little business in a village far off from those cities, does he?

A. Oh, yes. You take all through the smaller cities and towns in the state there are plants which are owned and controlled out of the state and on which the insurance is placed out of the state. As a matter of fact, that probably makes up the bulk of the non-resident business. For example, there is a Marshall Field business at Fieldale near Martinsville, controlled out of Chicago. The Pet Milk Company has a plant near Abingdon. That is placed out of St. Louis. These mills, which are going up in increasing num-
[fol. 301] ber in the middle and valley section of the State, are all controlled out of the state.

Q. You think then these out-of-state companies, if they had a risk like the DuPont plant over here—I don't know about that particular plant but that is an illustration—located close to a big city, wouldn't put this insurance through a big city broker?

A. Excepting for the centralization of control and close supervision that they have and the personal contact that that gives them with the people that they are holding responsible for seeing that their risks are properly and adequately protected. I have had the President of a plant near Norfolk, whose business we were carrying (this is, in part, in answer to what you were saying) who told me, "I would like to specify that my insurance be renewed in your company but we hold Johnson & Higgins responsible for seeing that we are adequately protected. We cannot hold them responsible and dictate to them where they shall place the business. That is their responsibility."

Q. Who is Johnson & Higgins?

A. A New York brokerage house.

Q. They could hold somebody else down here responsible if they wanted to, couldn't they?

A. Yes, sir, but Johnson & Higgins handled their insurance country-wide.

[fol. 302] Q. Which one of your answers is correct, that it is on account of the incompetency of the local agents in these smaller communities or because they want to centralize all of their insurance through their main office or home office?

A. I don't think I have said the local agents are incompetent. I did say that they were lacking in experience

because of lack of adequate volume to give them the experience and I did not intentionally intimate that the only reason large out-of-state concerns deal through brokerage houses in the cities of their headquarters was the lack of experience of the agents in the smaller towns as I think unquestionably the centralization of control is a factor in the case of plants in the smaller towns, as well as the plants in the larger cities where competent or experienced, well-organized agency service will be available.

Q. You think then that a man could not be called incompetent because he was not able to properly transact the business due to lack of experience; is that correct?

A. I wouldn't say he is necessarily incompetent, no. I would say he is inexperienced.

Q. That is largely a question of what you mean by "incompetent," isn't it?

A. It may be.

Q. Does your office engage in the business of actually [fol. 303] soliciting risks except at the invitation of, and in cooperation with, its resident agents in Virginia, that is commission agents?

A. I would not say regularly so, no, sir, and where we do produce any business directly we invariably turn that piece of business over to some resident agent when it is put on the books. The agent may know nothing about it until we send him a copy of the daily report and tell him that this piece of business has been put on the books and is credited to his account and we are sending a copy of the daily report for his records.

Q. Do you do that where you have more than one agent in the locality?

A. Well, the question of whether we had one or more agents in the locality wouldn't influence our going after the business one way or the other if we saw the lead, and the business would be turned over to that agent in the locality. If there happened to be two agents in the town, it would be turned over to the one of the two in whose office we were the leading company.

Q. I understood you to say yesterday that your company had declined to recognize any territorial integrity of agents unless they would give you the exclusive agency. Would that apply in a case of that kind or not?

[fol. 304] A. I don't see that the question of territorial integrity would be involved there because, while we would

write the business, it would go to the agent in the territory under our policy of doing no direct business.

Q. You would then, even though the agent had nothing to do with procuring the contract, recognize a moral claim on your company to that business, would you not?

A. It would not be a matter of a moral claim but the definite policy adopted by our company of doing no business, what is commonly known as over-the-counter, on which some local agent does not receive commissions.

Q. What is that policy based on? Isn't that in recognition of the fact that these agents have a moral claim on that business?

A. That policy is based upon a declaration of policy made by the National Association of Insurance Agents in which our management acquiesced, and since that time we have done no direct business and such direct business as we had on the books of the Richmond office at that time, which probably amounted to $8,000 to $10,000 a year in premiums, was distributed to Richmond agents.

Q. You don't recognize, however, the justice of the agent's right to commissions in cases where the risk in his territory is originated in New York through a broker in that city?

[fol. 305] A. We do not pay the agent commissions in the cases under discussion on the principal——

Q. I didn't ask you why; I just asked you whether you did or not.

A. We do not in either case recognize the fact that the agent necessarily has any right to commissions, and assuming the agent you are speaking of is the agent at the place of coverage.

Q. How many cases, to the best of your estimate, do you have personal knowledge of and that you have personally taken part in securing the signatures of resident commission agents?

A. There have only been two cases which I have personally handled.

Q. You don't have any knowledge of the circumstances under which the other countersignatures were secured, do you?

A. Not excepting that under the routine which we have set up the policy is sent to the agent who is to countersign with the request that he countersign it, return it to us with his bill for the countersigning commission, and the policy

and the bill for the countersigning commission are then sent to the producer, after a record is made of it by us, so that we may follow it up and see that the producer remits to us for forwarding to the countersigning agent the amount of commission due the countersigning agent.

Q. Do you have any knowledge of what transpired at all [fol. 306] in connection with these other contracts which were countersigned by resident commission agents? I mean personal knowledge?

A. No personal knowledge because, as I say, we have a definite routine set up for handling that as they are handled as routine matters.

Q. So you are not in any position, are you, Mr. Adair, to state what service these particular Virginia resident agents, who have received part of the commissions in connection with these cases, may render or whether they inspected or examined the policies or what they may do in the future in connection with them, are you?

A. Not on the basis of continuing in direct contact with those particular transactions, no.

Q. You have had only two occasions that you have had any personal contact with, haven't you?

A. That is right.

Q. So you are certainly not in position to say what has been the general practice throughout the state under the new system established by a new law when you have personal knowledge of only two cases, are you?

A. No.

Q. In your direct examination you spoke of the engineering and claims division of your company. Is that one division or two divisions?

A. Two divisions.

[fol. 307] Q. Are they both located in your branch office here at Richmond?

A. We have an engineering section here and one in Atlanta, a third one in the territory under my supervision in Charlotte and the fourth in Jacksonville, Florida.

Q. I mean are they located in your office, the same building, the same rented quarters?

A. Yes, sir.

Q. You are all in there together?

A. Yes, sir.

Q. The purpose of your office, Mr. Adair, is to deal with your resident commission agents primarily, isn't it?

A. Yes, sir.

Q. Your function is entirely different from the function of that resident agent, isn't it?

A. Yes, sir, in that he is producing business directly for himself, and I am producing business for local resident agents.

Q. If one of your resident agents has a loss on a policy he has written and the policy holder goes to him to take the matter up and get it adjusted, what does that resident agent do?

A. He will take a report of the loss on a proper form and send it to the particular claim office which services his claim. If it is a comparatively unimportant loss, the claim [fol. 308] will be adjusted through that agent through the sending to him of a draft in payment of the claim which he will deliver to the assured. On the other hand, if it is a loss of some importance, we will either send the company representative from the nearest claim office or if it is in a locality where we use a local attorney or an independent adjuster, as we do in many sections, he will investigate and make a report to us and handle the loss under the direction of the nearest claim office. Many of our losses involve third party claims. In fact, the bulk of casualty companies' business does involve lines where you are handling third party claims.

Q. What do you mean by third party claims?

A. For example, automobile claims where someone is injured by your car. Our liability doesn't involve a payment directly to you but our policy obligates us to hold you harmless and we take over the handling of that matter in your place and stead and pay, on your behalf, to the third party claimant who claims he has been damaged by you, whatever is necessary to dispose of the claim and secure a release on your behalf which is, of course, secured in your name.

Q. Isn't it a fact that in a large number of cases the local resident commission agent will be quite active in negotiating with the claim adjuster and trying to bring about a settlement which will be satisfactory to his client or the policy holder with the least embarrassment to him and in [fol. 309] such a manner as to make the whole transaction pleasing to his client as far as possible?

A. That is, to a considerable extent, true of run-of-mine claims but on claims of any size the experienced resident

agent seldom has any direct contact with the claim because, dealing as such claims almost invariably do with matters of law, the thoroughly experienced agent realizes the danger of his undertaking to deal with matters which are as technical as the investigation of legal liability, and that sort of thing, and pretty generally stays in the background. They do, however, quite generally help the company claims attorney or the local attorney in any way they can in giving him information because, as you say, they are interested in seeing the claim handled with the least trouble and embarrassment to their customer.

Q. But you think that a local commission agent would properly confine himself to that particular phase of the transaction where he is competent to act and not get into the field of law?

A. Yes, sir.

Q. What duties are there that you now personally perform as a branch manager which would be affected by this statute which you are complaining of in your complaint in this case?

[fol. 310] A. As I understand it, if the restraining order were not in effect, branch managers could not countersign but I do not understand that it is the purpose of the 1938 Act to prevent branch managers from going on as they have before, doing soliciting, underwriting and delivering contracts, as well as furnishing supervisory and assisting services to producers.

Q. As I understand your answer, Mr. Adair, the only act which you personally are prohibited from doing by the 1938 statute, which you have been accustomed to do in the discharge of your duties prior to that time, is the countersignature of policies and contracts; is that correct?

A. Providing I am correct in my understanding that under the Act as construed I would not be prohibited from delivering policies, as well as countersigning and rendering similar services to the assured, either directly or on behalf of agents.

Q. Your understanding is in accordance with the construction which has been placed on the Act by the defendants. As I understand the testimony which you have given, Mr. Adair, the practice of countersigning by you, or one of the persons authorized to do so by your company, consists of merely signing your name or the name of the person countersigning without any examination of the policy to

[fol. 311] ascertain whether, in your opinion or the opinion of the person signing, it is in proper form or whether it gives proper coverage for what is contemplated; is that correct?

A. Yes, sir, insofar as examining them with that in view is concerned. We, more often than not, do inspect them because quite frequently, in connection with large national lines, new ways of doing things and new methods of cover are developed which are not published in the manuals because they are peculiar to that particular risk and we always are interested in seeing whether or not there might be any such development in those particular policies which we might find it practicable to use to advantage in our own territory in connection with some of our business.

Q. Is that examination in a case of that kind made with a view of determining whether or not any mistake has been made in the New York office or merely for the purpose of informing yourselves as to new practices.

A. Merely for the purpose of informing ourselves as to new practices. The policies have already been inspected and approved as to form and cover before they are sent to us.

Q. So that the countersigning in your office is really a sort of a perfunctory matter?

A. Yes, sir.

Q. And you do not even keep a copy of the policy in your [fol. 312] office that you countersign; is that correct?

A. We have a copy of the policy for claim department purposes.

Q. That is kept in the Claim Department, is it?

A. It is kept in the general files in a file that is specifically set apart for non-resident business.

Q. Do you have anything to do with a contract of that kind after it is made?

A. Almost never. When I say myself, I refer to the production unit in the office. The risk is, of course, serviced claim-wise and engineering-wise by the local claim and engineering division.

Q. You spoke of some lines of insurance within your territory which have been negotiated through your office by brokers. How much of that business has there been?

A. You mean by brokers within the territory or by brokers from outside the territory?

Q. Brokers within the territory.

A. A comparatively small amount. The greater proportion of our volume comes through agents who are regular contract agents with us.

Q. Do you know of any business which has been brought into your office inside of the last twelve months by any broker residing in your territory?

[fol. 313] A. I could not offhand specify any particular risk. It is not, however, particularly unusual, especially here in Richmond, as respects the Virginia territory, for agents representing companies which do not write boiler or machinery business to broker those lines with us.

Q. But they are not licensed as brokers?

A. They are not licensed as brokers.

Q. What service does your engineering division render in connection with the various types of contracts? You may specify with reference to each type separately, if you desire.

A. As respects workmen's compensation insurance, we periodically inspect the plants and call the assured's attention to any dangerous condition we may find in the plant either as respects lack of proper guarding of machines or the failure of employees to use guards, as respects poor housekeeping in the plant, which means permitting things to lay around on the floor instead of keeping the floors clean and the aisles clear, and we also supply the assured with what we term a "claim analysis" which gives the date of an accident, the name of the injured employee, approximately how the injury was received, what it cost in compensation and medical expense, and the engineers go over those forms with the assureds to show them how the accidents are occurring in their particular plants and discuss what methods may be adopted to reduce the accident frequency and the [fol. 314] loss cost which is of equal advantage to the assured, inasmuch as compensation risks of any size are subject to individual experience rating so that their individual losses are directly reflected in their rates. On automobile fleet business the same general type of service is rendered, only there, of course, the equipment itself is inspected to see that the brakes are in order, that it has all of the proper lights and that they are in working condition; also a windshield wiper, rear view mirror and the other equipment that makes for safety. Meetings are held at intervals to discuss safety measures with the drivers. Wherever it is practicable we arrange for the setting up of a safety committee and, as far as practicable we arrange that a committee of employees shall have reported to it and shall investigate every accident that occurs, however slight, and let the employees' own fellow employees on that committee determine

whether that employee was negligent and should suffer some penalty, either through loss of some time or a fine or something of that sort, and those measures, where you can secure employer cooperation, are very helpful in improving the experience on individual risks.

With the mechanical lines, such as boilers, elevators, machinery, we make from three to four inspections of the insured's units a year and send a written report of the condition of the unit to the assured with recommendations for any needed adjustments or repairs. As respects boilers, [fol. 315] we undertake to get inside of the boiler at least once a year to determine from internal inspection whether the boiler is unduly pitting, whether it is collecting sediment in the bottom of the shell so that there will be a tendency for it to unduly corrode, and make tests of the water so that if the water is of a characteristic that it has an adverse effect on the boiler, we can recommend treatment of it to overcome that sort of thing. As a matter of fact, the mechanical lines are really preventive insurance.

A great portion of the premium goes for the engineering and inspection service. A considerably larger load of the premium goes for inspection and engineering than for the payment of losses. It is really servicing insurance with a guarantee back of it that if our inspection and engineering services don't prevent the loss, we will pay for it.

Q. How about surety bonds and bonds covering faithful performance of duties of employees and officers?

A. That type of investigation it is not practicable to make by direct use of company employees. In applications for all of those bonds we are given a history of the man's employment for the last ten years. We are also given a list of references. We correspond directly with former employers and with references and, in addition, get an outside report on the individual through some of the reporting agencies. Our forms all call attention to the persons of whom we make [fol. 316] inquiries that their replies will be treated as strictly confidential and neither the information they give us nor the source disclosed, with the result that through those channels we are able to get a pretty accurate picture of what sort of person we are setting out to bond and you will probably be surprised at the frequency with which we will find that some employee with a past that would unquestionably bar his employment will be uncovered in those investigations, with the result that we can pass on to the employer

enough of the information to serve his purpose to determine whether or not he is justified in retaining the person in his employ or whether he is unacceptable in a position of trust.

Q. Do your local resident agents also more or less keep acquainted with the habits of people like that who are covered by these surety bonds and try to see whether, in their opinion, there is any occasion for any alarm or anything of that kind. If they find out a man is drinking or gambling, or anything of that kind, wouldn't they report that, either to you or to an employer?

A. You occasionally have cases brought to your attention along those lines. As a matter of fact, both as respects bonds and as respects other forms of cover, unfortunately it is not done to anything like the extent that the average person not in the business would think it is done or to the extent it might be done.

[fol. 317] Q. Don't you encourage your resident agents to do that?

A. We do and there are still in the business a certain percentage of agents who feel a responsibility along that line but unfortunately in more recent years, with agents representing a multiplicity of companies and probably, in a measure, due to the attitude that some of the companies took in the heyday of 1928 and '29, where some of them in effect said to the agent, "You get the business; we will underwrite it," your average agent doesn't feel that responsibility.

Q. That depends, of course, on the type of agent?

A. On the type of agent. As I say, fortunately there are still some of the old school agents in the business. We not infrequently will get an automobile policy back for cancellation with just a note from the agent—"This chap is drinking too much; I think we will be better off without his business."

Q. As a matter of fact, a resident agent should do that, shouldn't he?

A. Yes, sir.

Q. Is this engineering staff which you have thoroughly adequate to perform all the functions that your company feels proper and reasonably necessary to perform for the assureds?

A. We think it is. We, of course, as the business grows, are having to continually add to it but we keep card records [fol. 318] on all risks and undertake to see that they get their inspections at the periodical intervals when they are due.

We have, of course, a double check on that. The engineering services in my territory are under a supervising engineer in the territory and if the reports don't get to New York within a reasonable date after a given risk is due for inspection, they call attention to the oversight and ask why the inspection hasn't been made. Of course, with boiler internals which necessitate closing down the boiler, we can't write a plant "Our man will be at your place on such and such a date to inspect your boiler," because that may be right in the middle of a big rush when it would cost them a lot of money and, therefore, those inspections may vary sixty days from the due date.

Q. The casualty companies, as I understand it, do undertake to provide whatever they think the occasion demands in the way of servicing those policies; is that correct?

A. That is correct, yes, sir.

Q. What type of service is rendered by the engineering department with reference to policies which originate in New York?

A. The engineering staff in the southeast services all of the company's business in the southeast, regardless of where it is produced.

[fol. 319] Q. In other words, the engineering department doesn't make any distinction at all?

A. No, they do not make any distinction at all. That is a part of the company organization and with them a piece of company business is a piece of company business.

Q. What service, along those same lines, do these New York brokers render in Virginia coverage contracts, that is where your service might not be adequate, or is it adequate, or what is the situation there?

A. The service of the brokers' engineering departments, as I understand it, is used by them as a supplemental service in a further attempt to improve the experience and reduce insurance costs to their customers.

Q. Have you ever known of any case in Virginia in which they have succeeded in following up your service and discovering any omissions which your service has failed to render?

A. No, sir, I would not know because their reports would not come through my office and I would never see them.

Q. Have you ever heard of any such cases?

A. I cannot say that I have, no, sir.

Q. Have you ever heard of the New York office complaining to the engineering department in Richmond that it has omitted to do what was possible to do in the way of servicing [fol. 320] these contracts?

A. No, sir.

Q. Then you have never heard of a case in which the engineering service of the New York broker has, in effect, supplemented the service provided by your company, to the extent of discovering anything which hadn't already been discovered?

A. No, I know nothing more than that they have supplemented the service. Whether it was of any direct advantage to the assured I would not be in position to say.

Q. Have you ever heard of any assured claiming that it was to his advantage?

A. No, sir, but there again I am not in contact with that business.

Q. Do the $500,000 of premiums that you spoke of apply to your Virginia office or your entire territory?

A. Our Virginia office will do close to $500,000 in Virginia.

Q. Annual premiums?

A. Yes, sir.

Q. I believe you stated that quite a good part of your activity is in trying to build up the good will of the assureds who have contracts of protection with your company. Do you do that independently of the resident agent who procures the contract or is that done in cooperation with him?

[fol. 321] A. Generally in cooperation with him. Ordinarily I would not, just out of hand, call on a customer of one of our agents. However, I have been covering this particular territory for so long that in many cases I am close enough to some of our agents and their more important customers that I don't hesitate to go in to see them without necessarily having the agent with me, but it is always on behalf of the agent.

Q. And you do that because you are sure that the agent will approve of your doing it?

A. Yes, sir.

Q. The purpose therefore of your doing that is as much to build up the good will of the agent, or probably more so, than it is of the assured, is it not?

A. Yes, sir, it is to tie our whole picture together. We are definitely an agency company.

Q. You spoke yesterday of the resident commission agent's authority to issue bonds such as surety bonds on employees or officers of the Government. Do they have authority, under their powers of attorney generally, to execute any bond they see fit within the scope of the power of attorney?

A. No, sir, because under our powers of attorney we give an agent a wide open power which is limited only in amount.

Q. I mean within the scope of his power of attorney. Of course, if it went over the amount it wouldn't be within it.

[fol. 322] A. Yes, but there are many companies that specify in their power of attorney the limit of the agent's authority as respects varying classes of bonds.

Q. I said provided he is within the scope of his power of attorney, does he have power to do anything within the scope of it?

A. I am coming to that. We give an agent a power of attorney for $100,000 and give him a separate letter of underwriting instruction which is an agreement between himself and his company and specifies the limits to which he may go on his own underwriting discretion as respects the various classes of bonds. We may, for instance, tell him that on contract bonds he shall not execute bonds on contracts exceeding $20,000 without first getting authority from his supervising office or from the home office.

Q. I had reference particularly to surety bonds.

A. Well, contract bonds are surety bonds.

Q. I mean surety bonds on employees and officers of the Government?

A. Bonds on employees are generally known as fidelity bonds and do not require a power of attorney for execution. Any of our contract agents would be qualified to issue a fidelity bond, guaranteeing the honesty and faithful performance of duties by employees.

Q. How about a public officer?

[fol. 323] A. Public officers and Government employees require statutory or Government forms of bond which call for execution by a power of attorney holder and bonds of that type may be executed only by agents who do hold powers of attorney.

Q. Does that agent have to take it up with the company before he executes the bond?

A. Only where the particular bond in question exceeds the authority granted him in his letter of underwriting instruction.

Q. Does he have to send in any application, or anything of that kind, before he executes a bond of that type?

A. Not if it is within his discretion. He satisfies himself that the risk is an acceptable one, executes it, and then sends us the application with the reporting sheet form we supply him for reporting bond business.

Q. You spoke yesterday of some possible inconvenience which might result to Virginia agents not living in Richmond where an immediate execution of one of your contracts is required. Do you anticipate there would be any difficulty in these agents over the state building up a form of cooperation with one another in signing those bonds at each other's request, something like they do on the borders of the state which you were speaking of some time ago?

A. It might be possible to do that which, in many of the cases, would take care of the situation, though not in all [fol. 324] of them. For example, we recently were requested by a Newport News agent to take care of an execution for him in Harrisonburg or Winchester—I don't recall which—and it happened we had no agent in the particular town where the execution was to be had, and our embarrassment was only relieved by the fact that this restraining order happened to be issued the day before the contract had to be signed.

Q. Who countersigned the contract?

A. Our representative from this office who was up there on other business, was duly licensed, and with the issuance of the restraining order was able to sign the contract.

Q. But if you had had a resident agent at that point you would have been relieved of that embarrassment?

A. Yes, sir, provided he was willing to execute it for the Newport News agent without charging him for it which, however, would have been optional with him. He could have signed for nothing or he could have said, "I want five per cent."

Q. That, of course, is a question of a practice of cooperation which these agents may build up among themselves, is it not?

A. Yes, sir, but there is a lot more talk about that than you actually find in practice.

Q. Of course, the resident agent, if he desires, could get [fol. 325] to Richmond from anywhere in the State within a few hours, couldn't he?

A. Yes, sir.

Q. I read you the following testimony of Mr. Nichols:

"Q. If a Virginia risk is produced by a New York broker, what branch manager's office gets credit for that. Does the Virginia office or the New York office get credit?

"A. The New York office, if it is placed in the New York office.

"Q. Most of them are, aren't they?

"A. Yes.

"Q. So there is no incentive, particularly in the Richmond branch office, on the part of the local branch manager to retain that business, otherwise then mere loyalty to the company, is there?

"A. That is right."

Do you agree with the correctness of those answers to those questions?

A. In general, except that it seems to me Mr. Nichols overlooked the fact that the larger the company's volume is in a given state the more complete servicing organization that volume will support and, that state being my territory, I would have the advantage of the more complete servicing organization. That is really a factor.

Q. You are assuming, however, are you not, that if a different practice were established your company wouldn't get the business, whereas, as a matter of fact, your company would probably get its share of the business regard- [fol. 326] less of whether a New York broker getting all of the commission is to be continued as a practice or whether it is abolished; isn't that true?

A. I am assuming that in undertaking to force this business to Virginia agents under this law an attempt is being made to do one of those things which cannot be done by legislation and that the bulk of this business will never be forced into the hands of Virginia agents.

Q. If your assumption is correct, you think the effect of that would be to cut down the efficiency of the engineering force?

A. Yes, sir.

Q. Is there any other effect that it would have on your business in your office.

A. No, sir, not directly.

Q. You spoke yesterday of some of the agents in other states insisting on associating Virginia resident commission agents. When cases of that kind happen does your office handle them?

A. Yes, sir.

Q. That is regarded then as a part of the business of your office just the same as if it actually had originated in Virginia; is that true?

A. Yes, sir; that is not invariably true but generally the business is sent to us with the request that we issue the [fol. 327] policies and have them countersigned by the local representative and the local representative and the non-resident producer work out an agreement between themselves as to the split of commission, with the understanding that the local representative will render such servicing as the assured may call on him to render.

Q. Naturally if that business is handled by your agents who are working in your office, your office should get credit for that business, shouldn't it?

A. Generally, though not necessarily. The business is actually produced outside of the territory and I would have no particular claim on it.

Q. Suppose the assured has its office in Richmond. Wouldn't you be in position to render services in connection with that policy along with the local resident agent?

A. The claims division and engineering division (if it were a risk susceptible to engineering) in my office would render those services.

Q. Doesn't your office render any service at all outside of the engineering and claims divisions?

A. There is almost no other service that is rendered on casualty business.

Q. Who renders the service of going over the situation with the assured and determining what type of contract he should have and how much protection he should carry and [fol. 328] the form of his contract and various questions of that kind that arise?

A. On risks where the business is controlled and placed outside?

Q. I mean controlled in Virginia.

A. Well, quite generally that is done by the resident agent who produces the business unless he feels that he wants us to help, in which event it might be done by myself or

someone from the office or someone of the twelve or fifteen special agent field men whose business it is to work with agents and assist them in matters of that sort.

Q. Primarily, the resident agent does that, with your cooperation and help, to such extent as he may request?

A. Yes, sir. As a matter of fact, we have developed a method of risk survey in which our special agents undertake, with local agents, to accomplish just what you mentioned, to give an insured a picture of all of his exposures, just which ones he now has insured and to what extent, and which ones are not now insured, how they could be properly insured and what it would cost him.

Q. And does the resident agent, with such cooperation and help as he gets from your office, usually keep an eye on the risk during the life of the contract and make such suggestions for changes in the manner of operation or in the cov- [fol. 329] erage of the contract, or any other questions that occur to him during the life of the contract after it is written?

A. That is his proper function and we set up a system of cards on all risks we survey so that if at any particular time it is desirable that certain phases of the risk be gone into he is dropped a line to remind him that now is the time to see so and so about this particular phase of his risk.

Q. Who does that—you or the engineering department?

A. The production department does that.

Q. Does the resident agent himself call on the engineering department or does he call on you and you furnish the engineering department?

A. On business on the books he may call on my office or he may write the supervising engineer directly.

Q. Which is usually done?

A. On business on the books he would generally write the supervising engineer and, in many cases, they personally know the engineer who covers that particular territory and they may drop him a line at his headquarters and ask when he is going to be in their section, that they would like to take up this matter with him.

Q. Naturally, if the New York broker should contact one of your resident agents in Virginia and have that business written, the business would be credited to your office, wouldn't it?

[fol. 330] A. Yes, sir. As a matter of fact, we have some such business on the books now and had it before the 1938 Act went into effect.

Q. Naturally, if the New York office desires the countersignature of a Virginia resident agent, they would send it to you, wouldn't they?

A. Yes, sir.

Q. And it would go through your office?

A. Yes, sir.

Q. If there were any equitable adjustment of the credit which the company would give to your office for its participation in that business and the volume of the business is of any size, it would really help your office, wouldn't it?

A. It would increase my volume to that extent but I expect there would be lots of argument as to what was an equitable adjustment.

Q. It would, however, place your company in a position where it would have to call upon your office to render that service of procuring these countersignatures, wouldn't it?

[fol. 331] A. Yes, sir.

Q. And to such extent as your office is given credit for that business, it would increase the overriding commission between the production cost and the acquisition cost which you say goes to carry on the expense of your office, wouldn't it?

A. Yes, sir, unless the business was subjected to the maximum acquisition cost or general agents' scale of commissions.

Q. Do you have any general agents operating through your office?

A. We have general agents who are general agents for commission purposes. We have no true general agents who are responsible for a given area of territory and for the appointment and development of agencies in that territory.

Q. What does the company do about the expense of your office with reference to your handling business which comes through these resident agents who get the commissions of the general agent which leaves no overriding commission to take care of any expense?

A. We just about get by on the expense of operating my office on the overriding commission that we have in the volume produced by our regional agents and our local agents.

Q. Does your company discourage giving to its resident agents a status of resident general agents in Virginia?

A. Under the acquisition cost rules which are promulgated by the acquisition cost conference (Plaintiffs' Exhibits 1 and 2) to which all companies doing business in New York [fol. 332] State must belong, the number of maximum commission agents which a company may have in Virginia and the number of regional agents they may have is limited. The company is glad enough to put out the permitted number of maximum commission contracts where they can secure a substantial volume of business that reasonably consistently produces a profit.

Q. So that in evaluating the services of your office the company would certainly not ignore the service which you render in connection with the general agent, although there might not be any overriding commission which would be available to help pay the expenses of your office; isn't that true?

A. Yes, sir, because after all they contribute their part of the profit my office produces.

Q. Would it be more or less trouble for your office to countersign one of these contracts itself or for it to procure the countersignature of a resident agent in the state?

A. It would be less trouble, of course, for us to countersign them ourselves in the company office because, in all fairness to our agents in general, if one-half commission is going to be paid to some resident agent in the state for countersignature, we couldn't very well throw all of that to agents in Richmond. In fairness to our other agents, we would have to send the policies out to various agents in the state to be signed by them and either returned to us for forwarding to the office of production or be signed by them and forwarded directly to the office of production.

[fol. 333] Q. You would naturally place that with an agent in the territory in which the risk is covered?

A. That would be the natural inclination, yes, sir.

Q. Is it not true, Mr. Adair, instead of the service which you would have to render to your company being diminished by this statute, it would be increased?

A. Clerical work would be increased, yes, sir.

Q. You would have to contact these agents and they would really have to call on you to do more than merely have a perfunctory countersignature, wouldn't they?

A. Well, all I would have to get from them would be the countersignature. Whether they would do anything in connection with the business after that remains to be seen, but I would have to see that the signature was good and would have to see that they actually received the commission which they would be due under the law.

Q. It doesn't appear then that you would be personally injured by this thing at all, does it? As a matter of fact, there would be more demand for your services than there was before; is that true?

A. Except that the signatures that I heretofore have been able to supply without cost to the company will hereafter be supplied at a cost of fifty per cent to the resident agent who supplies the signature.

Q. That doesn't come out of the company, does it?

A. Unquestionably at least the greater part of it would come out of the company because it is reasonably certain that the New York and other metropolitan brokerage houses [fol. 334] are not going to pay it.

Q. As a matter of fact, this perfunctory signature you speak of has no particular value to the company, so far as you individually are concerned, does it?

A. Except that it meets the condition which they must meet, which is that the policy be countersigned by a resident agent, and meets it without cost.

Q. As a matter of fact, if this countersignature is a perfunctory thing, as you say, they could probably employ somebody at ten cents a signature who would be very glad to do that work, couldn't they?

A. But not comply with the provisions of the law, as I understand it.

Q. I am speaking of the law prior to 1938.

A. Even if they paid ten cents a signature, that would be more than they would have to pay for me to sign it because they must, in any event, have someone in my position or a comparable position.

Q. How many contracts do you have a year through your Richmond office, average?

A. I estimate around 100 a month.

Q. So that would cost about $10 a month if they paid ten cents a signature, wouldn't it?

A. Yes, sir.

Q. That is not a very great deprivation to your earning power, is it?

A. No, sir.

[fol. 335] Mr. Staples: Counsel for the defendants is glad to admit that the affixing of a perfunctory signature to a contract of this type is valueless and worth only the physical effort put forth in signing the name of the person signing.

Q. You stated yesterday that your company would really prefer that on business originating outside of the state, covering in Virginia, the agent or broker originating the business should associate with him a resident Virginia commission agent. Why does your company prefer this?

A. I was expressing a personal opinion and it is my impression that my opinion was that the company would prefer having all of their business through company agents. I did not intentionally intend to express the opinion that the company would prefer that these non-resident brokers necessarily handle the business through Virginia agents. It would, of course, be immaterial to us whether the business is the agent's own production or whether he controls it through out-of-state sources, but naturally being an agency company, we like to see our agency plants build up and develop to the greatest extent possible and that would necessarily have the tendency to build up and develop the plants.

Q. I don't know whether I understand you clearly or not, but does your company prefer, or does it not prefer, that this [fol. 336] business originating through non-resident brokers should be handled also through Virginia resident agents as associates with such brokers?

A. I would be unable to make any definite statement as to the company's policy in that respect as I have not heard those who would be qualified to express such an opinion on behalf of the company make any statement in that connection.

Q. What did you have in mind when you made that statement yesterday?

A. My recollection of my statement was that we would like to have all of our business from our own direct agents.

Q. No, I think you are mistaken about that. You were speaking of a case in which local Virginia agents were being associated with non-resident agents or brokers and you stated your company preferred that. I was wondering what

you had in mind when you made that statement, if I correctly understood you. If not, I can have the stenographer read over the testimony and see whether I am correct.

A. I did not intend to say just what you think I did say and which I may unintentionally have said. As I said a few moments ago, we now have and for years have had on the books of my office a number of risks which come to us through our agents which I happen to know come to those agents through non-resident brokers. I would be glad to see all [fol. 337] non-resident business handled in that fashion, from the non-resident to a resident agent in Virginia and come to us through that resident agent along with his own business for the obvious reason that, so far as the company is concerned, my territory and my office would receive undivided credit for all such business.

Q. You will note in the questions and answers propounded to you yesterday the effect of your testimony is that your company not only would not throw any obstacles in the way of the practice of associating with non-resident agents and brokers a Virginia Commission resident agent but that you would prefer same. Do you recall what you had in mind when you made that statement?

A. It has been my experience where non-residents have so associated resident agents with them in connection with business they may have in the State of Virginia, the dealings have been between the non-resident and the Virginia agent and, so far as we are concerned, the business comes to us from our own agent.

Q. Do you know whether or not your company prefers that or not if you desire to construe your answer having reference only to your own personal views and not the obstacles or wishes of the company itself?

A. So far as I know, the officials of my company have expressed no definite view on that point but in my experience I have known of no case where they have thrown any obstacles in the way of business being handled on that basis.

[fol. 338] Q. Going back to the question of the recognition of some rights on the part of your agent in territory within his jurisdiction, I understood from your answer that the reason no such rights were recognized was because your general agents usually represented other companies which are competitors of your company. Will you please state whether or not you recognize the rights of resident com-

mission agents in Virginia, who are not general agents and who do not represent any competitor of yours?

A. The cases where our agents represent us exclusively are very rare and I do not know of any case involving an agent representing us exclusively where this question has been raised.

Q. What do you mean by representing you exclusively?

A. I mean representing no other casualty and surety company excepting the Fidelity & Casualty Company.

Q. You mean that most of the agents throughout Virginia represent competitors of yours?

A. Yes, sir.

Q. Do you mean to state that you have no agents who do not represent competitors in Virginia?

A. I mean to say that such agents are the exception rather than the rule.

Q. That may be true, but what is the situation with reference to them when you do have them?

[fol. 339] A. As I stated a moment ago, I know of no case where the company has any non-resident business that is within the territory of an agent who is representing this company exclusively.

Q. Have you received any instructions from your company to recognize any such rights if an occasion should arise?

A. No, sir.

Q. What would you say about a policy of all insurance companies as a whole, both your own company and your competitors, recognizing the territorial rights of your agents and their agents within the territory of Virginia as to business covering in Virginia?

A. I would say that that might be desirable if we could bring about a condition where the agents were agents exclusively of a certain company.

Q. I do not know whether you understand my question or not, but the question was whether or not all companies, regardless of whether the agent represents only one, should recognize not the claim of any particular agent, but the composite or combined claim of all of the agents in the state to some protection for Virginia business; that is, you might say, a joint claim and a joint recognition by the companies of the joint claim of all of these agents to Virginia business?

[fol. 340] A. I think that might be reasonable, provided it is left for the agents and the companies to work out what would be a reasonable compensation in individual cases, to be based upon the services to be rendered by the agent in connection with the business.

Q. You think that that plan is reasonable, do you not, although the details of the plan should be worked out?

A. Yes, sir.

Q. I understood that there was some claim being made, or a rumor or general belief among certain parties that there was a custom prevalent among the New York brokers of giving back, either to the large national corporations which are assureds, or to their representatives, a part of the commission received by the brokers. I will ask you what information, if any, you have with reference to that practice or any general belief that exists with reference to same?

A. My best information and belief is that no such practice exists. Undoubtedly there probably is some of it among the brokerage houses of less high standing, as undoubtedly there is some of it among the ranks of our agents. In New York State, particularly, there is an exceptionally efficient insurance department and that some of this does exist is best evidenced by the fact that they have from time to time revoked licenses of brokers for improper practices of that sort. However, the same thing can be said of company [fol. 341] agents and probably to as great an extent. It is not my belief from my many years of close contact with the business that the practice of rebating is indulged in by either the better class brokers or agents.

Q. Do you have information with reference to any cases in which it was claimed that the broker and the officer or insurance representative of one or more of these large corporations had formed a sort of collusion by which the assured's officer or representative personally received the benefit of this cutting or splitting of commissions, or whatever you choose to call it?

A. You hear of such cases every now and then but it would not be my judgment that it is any more common with men occupying positions of that sort than it is with men occupying comparable positions in other lines of business, particularly purchasing agents.

Q. Is it not true that it is generally understood in New York that there is such a practice prevalent among purchasing agents?

A. It is undoubtedly true in New York and other places.

Q. What kind of contracts are there that these Virginia banks place with Lloyd's?

A. Principally bankers' blanket bonds, though there is also some blanket safety deposit box insurance written by [fol. 342] Lloyd's, particularly within the last two or three years when there has been a decided increase in the tendency of banks to carry that sort of insurance.

Q. What do you mean by blanket bonds?

A. A blanket bond is a contract designed particularly for banks which takes the place of fidelity bonds on their officers and employees. It takes the place of their safe burglary insurance. It takes the place of their interior robbery, of outside messenger robbery and holdups. It covers their securities and collateral when in the hands of correspondents for safekeeping or in other recognized places of safe deposit. It covers securities in the hands of transfer agents, registrars, and that sort of thing, and it may cover the misplacement or mere disappearance of money, securities or other properties and, on one of the forms, may also include check forgery. Under an instrument of that type the banks pays but one premium and has protection on all of those exposures, subject to the limit of the bond.

Q. Those types of exposures require very little service, do they not, as compared to other bonds written by your company?

A. There is almost no service in connection with bankers' blanket bonds excepting the servicing of claims.

Q. What is included in the term "acquisition cost"?

A. Total production cost represents the total cost to the [fol. 343] company of laying the business down in the company's home office; that is, agent's commission, which would include the brokerage, if there is a broker, special agency service, all services rendered to or through agents in acquiring the business.

Q. What do you mean by special agency service?

A. Special agents are salaried company employees whose function is to travel throughout a territory, assisting agents in the production of business and seeking new agency appointments.

Q. Those agents operate out of your office, do they not?

A. Yes, sir. They are the people, for example, we send to the agent, as I mentioned earlier, when he has a machinery prospect or boiler prospect or some other prospect in a line with which he is not entirely familiar and needs some assistance in handling and closing.

Q. Do you have sufficient knowledge of the conduct of the business through the New York office to state whether or not any case occurred between the time of the taking effect of the 1938 statute and the granting of the temporary restraining order in which it has been necessary for your company to pay a greater amount of commissions, including that which was paid to the Virginia resident agent, if any, for the procuring of a contract than was customarily paid out in commissions to the broker alone prior to the taking effect of said statute?

A. I have no specific information on that point as any such transactions would be handled in the office originating the business rather than my own office.

Q. If any such practice were followed by any one par- [fol. 344] ticular company, would it not have the same status as ordinary competition between companies as to which would pay the greater commissions for business and would it not be in violation of the conference rules of these companies?

A. It probably would not be in violation of the acquisition cost rules because the company would not be paying the direct producer of the business any more than his normal commission, nor would they be paying a total production cost for the business in excess of the total production cost permitted by the rules.

Q. Then the total production cost allowed in the premium rate is sufficient to take care of this, is it?

A. The total production cost fixed in the premium rate is made up of the items of acquisition cost or agent's commission, plus a loading for field supervision, and similar services. The company would find it impossible to operate within the limits of the acquisition cost rules if on a very considerable part of their volume they expended the total production cost, or substantially the total production cost, for agents' commissions, whether the commission be paid to one agent or in two payments to one agent for production and to another for countersignature.

Q. As I interpret Mr. Nichols' testimony on this subject, his opinion was that a practice of this kind of competition

[fol. 345] between companies in this manner would result in chaos in the business. Do you entertain that opinion?

A. It unquestionably would have an unsettling effect in the business. I doubt that you could go so far as to say it would create a chaotic condition.

Q. It would be a very bad practice for the companies to embark on as between themselves, would it not?

A. It would be a practice that would be very hurtful to the interests of the companies, agents and insuring public, in my judgment.

[fol. 346] Redirect examination.

By Mr. Christian:

Q. Did I understand correctly that the responsibility you have in your territory as branch manager is that the total acquisition cost and field supervision cost of the business produced in that territory shall not exceed the rules set out in Plaintiffs' Exhibits 1 and 2?

A. Yes, sir.

Q. Is the metropolitan branch office operated on a similar theory?

A. Yes, our metropolitan office has to operate on the volume they receive from agents who are paid less than general agents' commissions, their expense being taken care of by the difference between the amount of commission paid their producers in the lower commission brackets and the maximum amount of commission permissible under the acquisition cost rules.

Q. I notice from Plaintiffs' Exhibit No. 1 that on automobile business in Virginia the commission is fifteen per cent and I assume a New York broker, producing such business not specially rated, would, before the enactment of this Act, have received fifteen per cent; is that correct?

A. Yes, sir.

Q. And that would leave, according to my understanding, five per cent that would be available for the expenses of Mr. Nichols' branch office; is that correct?

A. For Mr. Nichols' branch office and any such field supervision which might be necessary but which is wholly unnec-
[fol. 347] essary in the majority of cases where you are dealing with large brokerage houses.

Q. And the same way on workmen's compensation insurance covering in Virginia and produced by a New York

broker, he will get ten per cent and there would be seven and one-half per cent left for the payment of expenses of the New York branch office and field supervision; is that correct?

A. That is correct.

Q. If a Virginia agent has to get seven and one-half per cent of the automobile commission and five per cent of the workmen's compensation commission and the New York broker has to get a fifteen per cent automobile commission and a ten per cent workmen's compensation commission, that would only leave for the company to spend in Mr. Nichols' branch office minus two and one-half per cent instead of five per cent on automobile business and two and one-half per cent instead of seven and one-half per cent on workmen's compensation business, would it not?

A. Yes.

Q. And if Mr. Nichols' office continued to function as heretofore, it would have to do that functioning on these reduced amounts which are less than half of what it is now costing the company to do that functioning, would it not?

A. That is correct.

Q. Is there any reason to suppose that New York agents [fol. 348] and brokers rebate any more than Virginia agents and the agents in your other five states; or that corporate employees, with headquarters in New York, are any more often sought to be bribed and corrupted, or are they more amenable to bribery and corruption than corporate employees in Virginia and in your other five states?

A. The fact that the rates for fidelity insurance are the same in both places would indicate the standard of honesty is about the same.

Q. The Insurance Departments of Virginia and of your other five states are called on to investigate allegations of rebating and discrimination and other improper practices by agents and have occasion to discipline them from time to time just as the New York department does, do they not?

A. That is my understanding.

Q. A question has been suggested as to whether brokers and agents control the selection of the company with which the contracts of their customer assureds shall be placed and who shall be the insurer in those contracts. Speaking of your Davenport and Lunsford agencies, is it a fact or is it not a fact that, generally speaking, they are able to

determine whether their business will go to your company or the Globe or the others which they represent?

A. It is highly probable that where insurance is placed with high type agencies or brokerage houses, the insured does *know* know what company's policy is delivered until [fol. 349] the contract is delivered.

Q. Is this a situation peculiar to Virginia or to New York or do you find it so throughout your territory and, from what you know and hear of the business throughout the United States generally, that the agents and brokers control the selection of the company in ordinary cases?

A. It is quite generally true, as is best evidenced by the fact that more often than not where you ask a man where he has his insurance, he gives the name of his agent rather than the name of the company whose contract he holds.

Recross-examination.

By Mr. Staples:

Q. What effect, if any, upon the premium rate would it have for the broker to give part of his premium to the assured?

A. Before directly answering your question, I might say that I may have been a little hasty in saying that the fidelity rates are the same in New York as in Virginia, as I now recall that Virginia is the one state in the Union which is not subject to the uniform rates contained in the bonding manual. The basis of my statement to the effect that a similarity of such rates would indicate that the practice in question was no more common in New York than in Virginia is that an employee who accepts bribery, whether it be from his employer's insurance broker or from someone else selling to his employer, is a dishonest employee, and that being [fol. 350] so, if this practice were materially more common in New York than elsewhere, it would seem natural to presume that the cost of fidelity insurance, which is the protection that guarantees the honesty of employees, would be greater in New York than elsewhere.

Q. Is it not true that the volume of premiums involved in these transactions provides a very much more fertile fund for breeding such practices than would be in the south where the premiums are usually small?

A. It seems to me that in this situation, as in most, things are relative. While the New York brokers deal with larger

premiums, it must be borne in mind that their expense of doing business is a great deal more than the expense of doing business in the smaller cities of the country. Under the circumstances, it is doubtful that despite the large figures in which they deal, they are relatively any better off in the final analysis than a well-managed and successful agency in a city the size of Richmond.

Q. Assuming then, Mr. Adair, that the standard of honesty is the same, and I believe you said practices of this kind prevail all through your territory, it nevertheless is true, is it not, that the agents in your territory do not have an opportunity to have transactions of this kind with reference to these large volumes of business about which we are speaking, by reason of the fact that they have no contacts with the persons with whom any such arrangements would be made?

A. It is unquestionably true that in my territory the agents do not handle accounts as large as many of the ac- [fol. 351] counts in the metropolitan areas but I would like to be fairly understood as maintaining that both as respects New York brokers and agents in this territory the percentage of those who are dishonest and stoop to such unethical practices as rebating is very low in both classes.

Q. With reference to the effect on your office, I will ask you this question: If it were possible by legislation to eliminate the practice of these large national corporations making in the large cities their risk contracts covering all over the United States, and especially in Virginia, would it not have the effect of very greatly increasing the volume of business in your office?

A. If it were practical it might have that result but the thing that particularly concerns people in my position is a conviction that this is one of those things which cannot be controlled by legislation, just as the country has heretofore found that there are other things that legislation simply cannot control. We are satisfied that the attempt to enforce the provisions of such a statute will result in the driving of this business, or certainly the greater part of it, to non-admitted or other companies not subject to the provisions of the statute.

Q. Mr. Adair, I did not ask you for your opinion as to whether a law of this kind could be made effective but I stated in my question that if it were possible to prevent the making of these contracts in the manner I stated in

ny previous question, whether they are made through [fol. 352] mutual companies or whether they are made through non-admitted companies or whether they are made through Lloyd's, would it have the effect of increasing the volume of business in your office?

A. It would not have the effect of increasing the volume of business in my office if the business goes to companies of the type you suggest.

Q. If the contracts are not made in New York they naturally wouldn't go to those companies, would they?

A. It is inconceivable that a Virginia statute can control what will be done in New York.

Q. You still haven't answered my question. I am assuming that that can be done by the law. I didn't ask your legal opinion. I would like to know what the effect of it would be if it could be accomplished?

A. If it could be accomplished, yes, sir.

Q. Then it would have the effect of greatly increasing the volume of business in your office; is that correct?

A. If it could be accomplished, yes.

Q. And it would also have the effect of greatly increasing the volume of insurance production business done in the State of Virginia and these other states outside of Virginia?

A. If it could be accomplished, yes.

[fol. 353] EDMUND T. DEJARNETTE, a witness called on behalf of the defendants and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. DeJarnette, I wish you would state your full name, age, residence and occupation?

A. Edmund T. DeJarnette, Ashland, Virginia; 41; insurance, general agent.

Q. What insurance companies do you represent at the present time, Mr. DeJarnette?

A. National Liberty Insurance Company, the Employers Liability Assurance Corporation and National Surety Corporation.

Q. Are all of those casualty and surety companies?

A. One fire, one casualty and surety, and one mainly surety but writes some casualty.

Q. Which is the fire company?

A. National Liberty Insurance Company.

Q. Is that one of the Home Insurance Company group?

A. Yes.

Q. I wish you would state, briefly, what your experience has been in connection with the fire, casualty and surety business in Virginia?

A. I have been in business in Virginia more than twenty years. I was first employed by the Virginia Insurance Rating Bureau, next by the Fidelity-Phoenix Fire Insurance Company and then went into the local agency business in October, 1920.

Q. Have you been engaged in business in Richmond all of that time?

[fol. 354] A. In the local agency business in Richmond since October, 1920.

Q. Are you a member of the Virginia Association of Insurance Agents?

A. Yes.

Q. Are you an officer or director in that Association?

A. Director from the Richmond District.

Q. The principal questions involved in this suit relate to the handling of contracts and policies which originate through negotiations conducted outside of Virginia and I wish you would please state what has been the practice, prior to the passage of the 1938 legislation, with respect to the status of the Virginia commission agent with reference to fire insurance policies so originating?

Mr. Christian: None of the plaintiffs is a fire insurance company or in any way concerned with that business. This question, as well as others which may bear on the fire insurance business, is objected to as not material and the reading of answers to such questions will be objected to for lack of materiality.

A. It is pretty generally known and accepted by agents in Virginia that the fire companies have policies countersigned only by Virginia commission agents. I think every office in Richmond at one time or another has countersigned fire contracts for the fire companies on business covering in Virginia, originating outside of this state.

[fol. 355] Q. What has been the custom with reference to the compensation of the Virginia commission agent when he countersigned the fire policies?

Mr. Christian: Is it understood between us that my objection to the question and answer about fire insurance shall be taken as made to all questions and answers?

Mr. Staples: That is understood.

A. One-half of the commission in most cases is paid to the Virginia countersigning agent. In the case of Richmond agents it is always one-half commission.

Q. Do you know what compensation the non-resident broker has received in cases of that kind prior to the passage of the 1930 Act?

A. No, sir.

Q. When you speak of one-half of the commission being paid to the Virginia agent, what commission do you refer to?

A. Twenty per cent commission.

Q. Is that the standard producer's commission on fire insurance contracts or the general agent's commission?

A. In Virginia there has been no scaled commission for fire insurance as compared to casualty. There is only one commission to all agents of twenty percent except in the case of branch office agents where the company furnishes certain services and pays the branch office agent less commission.

Q. Does this branch office agent work on a salary or com-
[fol. 356] mission basis in the fire insurance business?

A. On a commission basis.

Q. But his commission is smaller on account of other compensation furnished in the way of office equipment or accommodations, or something of that kind?

A. Yes, sir.

Q. What has been the custom of fire insurance companies with reference to exclusive agency in a certain territory?

A. Fire insurance companies appoint an agent for a city or town and vicinity and they do not permit other agents to write in that territory in that company without that agent's permission. It is more or less exclusive territory.

Q. What is the extent of your territory with your fire insurance company?

A. I should say Henrico and six or seven counties adjoining.

Q. Do you have other agents working out of your office

in the fire business? I don't mean out of your office but associated with your office as sub-agents?

A. Yes, sir, solicitors, we term them under the law.

Q. Do most fire insurance agents represent more than one fire insurance company?

A. Practically all of them represent more than one company.

Q. Do you represent more than one company in your office?

A. No, sir, I represent only one.

Q. Does the practice of paying the local agent fifty [fol. 357] percent of his usual commission on business originating outside of the state, covering in Virginia, apply in cases where the agent represents more than one company?

A. Yes.

Q. What has been the practice with reference to the casualty and surety companies in Virginia?

A. My office never countersigned a contract prior to the effective date of this new law for a casualty company and I am informed by most all of my competitors in our various discussions that they didn't countersign any contracts for casualty companies.

Q. You mean contracts originating outside of Virginia?

A. Yes, sir.

Q. What has been the custom with reference to the countersignature of these policies in the casualty and surety business prior to the passage of this Act?

A. Countersigned by branch managers or company representatives domiciled in the state.

Q. Were these branch managers or company representatives compensated by commission or on a salary basis or both, or how were they compensated?

A. I can only answer that question from what the branch managers and company representatives have told me and they told me that they received no commission for it nor did they receive any credit for the volume in their figures from Virginia.

Q. Has it been customary in the casualty and surety business for the Virginia commission agents to receive any [fol. 358] compensation, generally speaking, on contracts and policies covering in Virginia but negotiated outside of the state?

A. I should say in the great majority of the business no Virginia agent participates in the commission. Pos-

sibly in some particular case a resident agent, due to some very close relationship with the assured in Virginia, or some other particular reason, or because the assured may have asked for that agent's service, the broker has recognized him and paid him a portion of the commission. That is done, however, in a number of cases.

Q. Has it been customary for the Virginia commission agent to render any service of any kind in connection with Virginia coverage on surety and casualty contracts originating and negotiated outside of Virginia?

A. They have countersigned such a few of them, other than the cases I named above, that I don't think any service has been rendered. I am not aware of it if it has been, except claim service when a claim occurred or possibly assistance in inspection or information given when the Virginia representative of the policy holder asked for it.

Q. Do you have reference to cases in which the resident commission agent did countersign or where he did not countersign?

A. Where he did not countersign and where he did countersign. I mean by that, in some particular cases this has been done to my knowledge, and I think to most peoples' knowledge, that some agent may have received certain business from companies as a particular favor to that agent [fol. 359] and a commission paid that agent. My information is that the agents did not render any service other than mentioned above in those cases.

Q. Did the agent render any service at all in cases in which he was not in any way associated with the business?

A. None whatsoever.

Q. The questions which I am going to ask you are directed to the general custom in the business and not to exceptional cases which may arise and I hope you will try to confine your answer to the general practice and leave out exceptions unless requested to testify with reference to exceptions. What is the practice with reference to the maintaining of the office and paying the office expenses of a Virginia local resident agent? Who pays those office expenses?

A. The agent.

Q. Does the company make any contribution generally to the expenses of the office?

A. Not to my knowledge.

Q. How is this Virginia resident commission agent com-

pensated? Does he receive any salary or is his sole compensation in the way of commissions?

A. Solely on commissions.

Q. What is the general rule with reference to company representatives? How are they compensated?

A. I understand on salary only.

Q. Is that your knowledge based on your general experience in the business?

[fol. 360] A. Yes, sir, I worked for a company and was paid by salary.

Q. What position did you hold when you were paid a salary?

A. I was Assistant Special Agent for one company and Special Agent for another.

Q. In your experience with the Virginia Rating Bureau can you testify as to the general component factors of the premium in the casualty and surety lines?

A. The Virginia Insurance Rating Bureau handles only fire. However, the same factors go into the make-up of the rate for casualty as they do for fire.

Q. Are you familiar with the building up of the casualty and surety rates?

A. To some extent, yes.

Q. What factor in that rate is designed to take care of the compensation of the commission agent?

A. In accordance with the Virginia law, the Corporation Commission governs certain rates. The rates are arrived at by what is known as pure loss ratio or pure premium, plus acquisition cost. In the acquisition cost the records show that twenty percent is allowed for producing commissions to Virginia agents.

By Mr. Staples:

Q. In what particular line of coverage is that true?

A. Automobile liability and property damage.

Q. Does that twenty percent cover also field supervision, or do you know?

[fol. 361] A. It does not. Field supervision is covered in the remainder of the acquisition cost.

Q. Are you sufficiently familiar with the construction of premium rates to state whether or not there is a factor included therein, regardless of the particular percentage involved, which does embrace the commission or compensa-

tion paid or to be paid to the agent who negotiates and procures the insurance contract and renders the service incident thereto or with respect to same throughout its duration?

A. The twenty percent referred to above pays all production cost which is commission.

Q. When a Virginia agent negotiates a casualty or surety contract I wish you would state what service he renders to the assured with respect to same, not only from the beginning of the negotiations but throughout the life of the contract? If you desire, you may pick out any specific type of contract as an illustration, or several types.

A. We will take the procuring of an automobile risk. First an agent talks to the prospective policy holder and explains to him the service that his office is prepared to render in connection with proper rating, as to exact location of each automobile to be insured, a proper classification of the rate to apply to the car and whether or not the territory rate is proper. He also explains to him that his office is prepared to render a service over the length of the proposed contract as to the inspection of the equipment, also inspection of the drivers of the equipment to determine whether or [fol. 362] not they are handling the equipment with the proper caution and care, with the idea in mind of preventing accidents or accident frequency and, of course, claim service. A careful check is made of all equipment and proper listing of each piece of equipment. The policy is issued, countersigned and delivered and proper arrangements made for the settlement of the premium.

Q. Suppose you have a fleet contract?

A. Certain credits apply to cars over five and, if more than ten cars, he is entitled to an experience rating after the risk has been with some insurance company over a period of two years to develop an experience and premiums against the losses justify it.

Q. How do you ascertain what his experience rating is or experience credit or charges, as the case may be?

A. In the case of my office, we keep a complete record of all claims reported and claims paid. Of course, we know the premium and at the end of the policy period we check that information with the company. The company furnishes that information to an automobile rating bureau and they promulgate the experience. Our office is thereby in a position to check. We also keep a complete list of all claims reported as to accident frequency so that we can be prepared

to advise an assured when he may need a safety talk for his drivers or a preventive measure to prevent further accidents.

Q. Do I understand from the foregoing that the Virginia agent makes a continuous study of the experience of the as-
[fol. 363] sured in cases of this kind so as to determine any changes in the rates or classifications or anything of that kind that may develop, or not?

A. My office makes a careful study of all such risks, mainly for the purpose of producing to the policy holder the broadest coverage at the lowest premium dollar and we know from experience that safety talks and accident consciousness will prevent further accidents and thereby produce lower premiums to our policy holders. That is why we make a very careful record of all accidents reported, so that we may keep a close contact with the policy holder and we know what the trend of the risk is before the result gets too bad.

Q. Suppose there is a loss incurred, what, if anything, does the Virginia commission agent do?

A. We follow it very closely in my office, each stage of it. In most cases we take the reports ourselves, turn them over to the claim adjuster, who is a company paid employee, and we follow that to its conclusion in this method: We have an understanding with our Claim Department that any hitch in the settlement of any claims will be brought to our attention before they go too far with them to antagonize our assured and by that method we know that the loss is being successfully concluded, and then finally a report comes over my desk stating that the accident has been settled for so many dollars. We immediately communicate with the automobile policy holder and tell him we have paid out so many dollars under this particular claim. If there happened to be several [fol. 364] claims during that policy year, we say to him, "Your risk is beginning to produce a bad experience and we suggest certain features of improvement."

Q. It is not always to the interest of the holder of a policy of this type that there shall be liberal payments to the claimants, is it?

A. Never to his interest because an experience rated risk has a premium in accordance with the experience.

Q. Is what you have stated with reference to automobile

liability policy contracts and the service rendered pursuant thereto , enerally true as to other agents in the state, so far as your experience enables you to speak.

A. From the amount of business my office controls, I think they probably render better service than I do.

Q. Who does?

A. These other agents. Most of them have as much business or more than I do, so they must be rendering equally as good, if not better, service.

Q. Under the custom of the business is an assured regarded as a client or a customer of the agent or of the insurance company or both? What is the custom with reference to the status of the insured?

A. He is regarded as a client or customer of the agent only. Of course, he has a contract with the company but he, in many cases, may not know what company it is. Certainly when you go to sell him he very seldom asks the company that you intend to place the insurance in.

[fol. 365] Q. When a loss occurs is it customary for the assured to confact the agent who wrote the policy or for him to get in direct touch with the Claim Department?

A. All of our policy holders get in direct touch with us and I think that is the case in most Virginia business. When the policy holder suffers a loss he immediately communicates with the agent who produced the business and looks to him for all service on that business.

Q. What is the attitude of the agent with reference to controversies and disputes which arise between the policy holder and the insurance company?

A. The agent is a representative of both the company and the policy holder and he is to see that the policy holder obtains every right and benefit that the contract entitles him to. The company, from the experience of handling claims and almost every company representative knows what that particular contract gives to the policy holder or the conditions of the contract, whereas the policy holder is not entirely familiar with all the conditions of the contract and the agent naturally explains those conditions to him when losses occur, and when there is a controversy the agent's position is to see that the company is fairly treated, that they pay no more money than the claim is actually worth and that the insured does not suffer. Although in some cases the

policy holder suffers more loss than he receives compensation for, but the agent sees that the contract is carried out by both parties as nearly fairly as possible.

[fol. 366] Q. Does the commission agent receive any other compensation at all than the commission paid him at the time of the writing of the contract?

A. No, sir.

Q. Does the agent regard that compensation as full compensation for the entire service that he renders or may render during the life of the contract?

A. Yes, sir. However, in some cases or, I understand, in quite a number of cases, casualty companies pay what is known as a contingent commission.

Q. What is the nature of that contingency?

A. I do not have such a contract. However, I am somewhat familiar with them and I am informed that it is a percentage on the net premium after deducting losses and expenses on business produced by an agent.

Q. It is on a sort of share the profit basis?

A. Yes, sir.

Q. I wish you would state the nature of the service, from the very beginning, which is customarily rendered by a Virginia commission agent in connection with a workmen's compensation insurance contract, if your experience is broad enough to enable you to state what that service is?

A. In producing compensation business it is necessary to make a personal inspection of the plant, including the bookkeeping department for pay rolls, to properly classify the insurance. Various rates make up a compensation risk. In order to see that the proper amount of pay roll for each [fol. 367] classification is charged for at the manual rate, an inspection is necessary and the policy is issued apportioning the proper amounts of pay roll to the various classifications such as office employees, outside salesmen, drivers, chauffeurs, and their helpers, and various other classifications that apply to the plant, and the policy is, of course, checked, countersigned and delivered and proper arrangements made for the collection of the premium. Then you furnish the assured with proper blanks to complete the reports of accidents in accordance with the law and also advise them that an inspector from the company, in the way of an engineer, will pretty shortly make an inspection of the risk and determine if any additional safety appliances should be installed to prevent accidents. When that report

comes through from the engineering department my office gets a copy. We immediately go to the assured with a copy of the recommendations and determine whether or not the recommendations justify the expenditure of that much money. In some cases we actually work out with the Engineering Department improvements on their recommendations.

Q. Does the Virginia commission agent assist in the preparation of proofs of loss in any of these cases?

A. In most cases the casualty claims proofs of loss for compensation insurance are not necessary. For automobile liability and property damage claims it is not a proof of loss; it is a release that is executed. Of course, that is done by the Claim Department because in those cases they [fol. 368] are dealing with third parties; they are not dealing with your assured. A release is obtained from the third party. In a number of cases our office actually gets those releases signed, particularly where we know the person that is being paid the money.

Q. What does the Virginia commission agent do, if anything, with reference to requirements contained in a policy that the company shall have certain notice of happening of accidents or losses of any kind?

A. The policyholder reports the claim to the agent and the agent, in turn, reports it to the company in accordance with the contractual conditions.

Q. You spoke of notifying the assured that his plant would probably be visited by the engineering officer of the insurance company. Do these casualty and surety companies maintain engineering officers in Virginia?

A. Most of them do.

Q. Is that service available to the assured at the request of the commission agents?

A. Yes, sir, a good bit of business is written subject to inspection, such as boiler business.

Q. Is it customary for the insurance company to provide this engineering service or claim service, or any other service that the company maintains in the state, to the assured at the request of the Virginia commission agent?

A. In our case the engineering office is in Richmond and we call the engineering department directly. We have that [fol. 369] authority. We tell them we want an inspection of a risk. If it is very, very important, it may be necessary

to do so this morning. As a matter of fact, before I left my office I called my engineer and asked him to inspect a boiler by noon tomorrow.

Q. I asked you with reference to the general custom with other companies aside from your own.

A. Yes, sir, all of them have it.

Q. I don't know whether your answer is clear or not as to that custom. Is it or not a fact that it is customary for the engineering and other services which are maintained by the casualty and surety companies in Virginia to be furnished whenever requested by the Virginia commission agent who represents that company?

A. Yes, sir. The companies in planting an agency stress the fine engineering department that they have here for your service.

Q. What about the service in connection with boiler inspection which is provided by the company?

A. Do I understand you mean what type of service?

Q. What do they do about it?

A. The agent requests the engineering department for the company to make inspections of certain equipment that they have procured applications of insurance for and the company makes the inspection to determine whether or not the equipment is insurable and also makes recommendations as to the improvement of the equipment. That is purely technical work and the engineers are the only people, and [fol. 370] particularly boiler men, that can make that inspection and determine any necessary improvements or whether or not the equipment is insurable.

Q. Do you know whether or not it is customary for the insurance carrier to periodically inspect, through its service department, elevators, boilers, machinery and other risks that are covered by their policies?

A. Yes, sir, they make at least annual inspections and sometimes semi-annual inspections. If the equipment is treacherous or not in excellent condition they may make three or four inspections annually.

Q. Mr. DeJarnette, what casualty companies or insurance companies do you represent?

A. Employers Liability Assurance Corporation.

Q. Is that company one of the plaintiffs in this suit, or not?

A. No, sir, they are not a complainant.

Q. Has that company been sending you contracts for countersignature and paying you fifty per cent of the commission since the 1938 law went into effect?

A. Yes, sir.

Q. I wish you would state what has been the view of you and members associated with you in your office as to what you should do about a contract that was sent to you for countersignature since the 1938 law became effective?

A. Until recently we have not done anything but countersign the contract and check it as to its correctness to see that [fol. 371] the proper rate was applied. We did not contact the assured and in one case we found an automobile rate written too low. The car was garaged in the City of Richmond and carried a remainder of the state rate which we called the company's attention to and it was corrected to carry the City of Richmond rate.

Q. Has it been customary in your office to examine the contract and see whether or not there appeared to be any irregularities about it of any kind?

A. Yes, sir, we check every contract, keep a complete copy of the contract, and see that all the rates and forms are applicable to Virginia requirements and, in case that they were not, we communicate with the company from which the business came, correcting the forms or rates.

Q. Have any of the assureds under any of those contracts contacted your office in any way in connection with these contracts?

A. Yes.

Q. Just state what instance, if any, has happened in that connection. You need not name the assured unless you desire.

A. We had a case where a Richmond organization, not a chain organization, through a New York broker, had sent our office a policy to be countersigned and very shortly after the policy was countersigned a claim occurred and the assured communicated with me and we put them in touch with the Claim Department and saw that they received proper [fol. 372] service on the claim. He then wanted to know the cost of increased limits on the risk and we gave him that information. Then he wanted to know why we couldn't handle the business for him directly and not have it come through some New York broker and we told him in that particular case that we were associated with the New York broker and he was entitled to the service of our office and our office was responsible to him for the correctness of his

policy; for the proper classification of the risk and also for claim service or any other service our office could render him, but we would have to pay the New York broker one-half of the commission on that business because the business had come to us through him and we would not take it from him on a renewal but would protect the interest of the New York broker.

Q. Since this new law became effective has there been considerable discussion among the Virginia resident commission agents as to what status they occupy with respect to these contracts which have been sent or may hereafter be sent to them for countersignature on account of contracts negotiated outside of Virginia?

A. Yes, there has been considerable discussion and the manager's office of the Virginia Association of Insurance Agents has been constantly flooded with letters from agents over the state asking his interpretation and what must be done and what their rights were and the construction of the law.

Q. Did you and the manager and some other agents consult the Attorney General of Virginia with reference to this subject?

[fol. 373] A. Yes, we did.

Q. What action, if any, was taken by the Association?

Mr. Christian: That question and answer are objected to as immaterial. Will not Mr. Staples relieve me of the necessity of repeating this objection about these transactions between him and the agent?

Mr. Staples: Yes, I regard counsel as objecting to all of this testimony.

A. At a meeting of the Board of Directors of the Virginia Association of Insurance Agents, which is composed of nine directors, a President, a Treasurer and a Chairman of the Board——

Mr. Christian: If it is proposed to show what was done at meetings of Board of Directors of this organization of which the witness is a member, it is insisted that the organization should be identified and its rights in this action stated, and it should either be shown that it took no minutes of its meetings or the minutes of the meetings should be introduced in evidence to show what they did at their meetings. These are additional objections to the present ques-

tion and answer in addition to the general objection that none of it has anything to do with this case.

A. (Continuing) —a resolution was passed which definitely outlines the duties of a Virginia resident agent in connection with handling business produced by non-resident brokers licensed in Virginia.

[fol. 374] Q. I show you a copy of what purports to be a resolution passed by the Board of Directors of the Virginia Association of Insurance Agents, Incorporated, passed February 13, 1939. The correctness of this is certified to by Oscar H. West, Manager. I will prove the correctness of this copy by Mr. West later on during the taking of the depositions. Inasmuch as you were present at the meeting, however, I will ask you to state whether or not this appears to be a correct copy of the resolution?

Mr. Christian: The objection is renewed to the introduction of the paper and I again emphasize its utter immateriality because of the fact that none of these requirements purported to be herein set up are made by law and compliance therewith would be no part of the obligation for which consideration is paid when a countersignature is furnished.

A. This is a copy of the resolution passed unanimously by the Board of Directors.

Q. That resolution, I believe, was drawn in consultation with the Attorney General or a tentative resolution similar to that was drafted on such consultation, was it not?

A. Yes.

Q. Do you know whether or not a copy of that resolution has been mailed in a bulletin sent out by the Virginia Association of Insurance Agents, Incorporated, to members under date of February 17, 1939?

A. Yes, sir, my office received a copy this morning.

[fol. 375] Q. Prior to the enactment of the 1938 Act and the time same became effective had there been any practice of countersignatures of contracts of this type by commission agents in Virginia to such an extent to establish a custom bearing upon the duties and responsibilities of a Virginia resident commission agent in relation to casualty and surety contracts negotiated outside of Virginia?

A. In my opinion I would think there had not been a sufficient volume to determine such a procedure or practice. As I explained before, in most cases where resident agents

had countersigned policies they had a definite tie-up with the broker or with the assured and they knew definitely before they countersigned a contract what their obligation was by agreement with the broker or assured.

Q. Has the Virginia resident commission agent ever regarded his duties and obligations to the assured completed upon the mere execution and delivery of the policy or contract of indemnity?

A. No, sir. We realize when we effect a policy that we then cite to the assured that our office will be at his service during the life of that contract.

Q. Generally speaking, when an agent in Virginia procures a casualty contract, in the course of his study of the subject of the risk, is it customary or not for him to make any suggestions as to changes in the contract or policy provisions or rates or any other matter which may arise during the life of the contract to which the assured may become entitled?

[fol. 376] A. Yes, the agent fits the contract to meet the requirements of the policy holder. Also there may be changes as to rates and forms or certain privileges extended during the life of the policy that may or may not apply to existing contracts. However, if they are applicable to existing contracts, the agent immediately notifies his policyholders that the policy has been extended to cover this particular feature, whatever it may be.

Q. Is it or not true that riders are frequently attached to a contract to cover changing conditions?

A. Yes, sir.

Q. I will ask you whether or not from your general knowledge of the business of commission insurance agents of Virginia, it is your opinion that the agents throughout the state, generally speaking, will abide by the obligations which the Board of Directors of the Virginia Association of Insurance Agents has decided are imposed upon them under the 1938 Act?

A. In my opinion, they will. They look to the Directors and officers to formulate general practices and principles in reference to that business. The Association office is headquarters or clearinghouse for all suggestions from the agent members and suggestions from elsewhere that may improve or better the business and many good ideas come out of that office for the improvement of the business. Agents generally abide by their decisions.

Q. Subject to the proof of the correctness of the resolution contained in this bulletin, I will ask you to state whether or not this is a copy of the bulletin which has been sent to the members of the Virginia Association of Insurance Agents?

A. Yes, sir, this is similar to the copy received by my office from the Virginia Association.

Q. I will ask you to file this as Defendants' Exhibit A with your testimony?

A. I will.

(This paper was filed and marked Defendants' Exhibit A.)

[fol. 376a] DEFENDANTS' EXHIBIT "A"

February 17, 1939.

To All Members:

House Bill 151. At a meeting of the Board of Directors held in Richmond, Monday, February 13, 1939, the Board passed unanimously the following resolution:

Resolution

Whereas, Under the 1938 Virginia law the Virginia resident agents are required to be associated with Virginia licensed non-resident brokers in connection with all fire, casualty and surety contracts insuring Virginia risks whether the same be negotiated exclusively by such non-residents or not; and

Whereas, The Virginia resident agent is required by said law to be paid at least 50% of the usual commission for same; and

Whereas, Some question has arisen as to the functions and duties of the Virginia resident agent in such cases and this Board has been requested by numerous Virginia agents to define resident agents' duties and functions in such cases,

Now Therefore be it Resolved:

(1) Whenever a Virginia resident agent is requested to countersign such a Virginia coverage contract he shall consider himself associated with the non-resident agent or broker who negotiated same. In all cases where a Virginia agent is associated in the writing of a Virginia policy or contract by a fire, casualty or surety insurance company or a non-resident Virginia licensed broker, the Virginia agent shall, before countersigning the policy or contract, contact

the assured or his Virginia representative, if practicable, and familiarize himself with all pertinent facts relating to the policy or contract. Thereupon he shall carefully examine the policy or contract to ascertain whether same is in proper form, correct as to rates and coverage and is best adapted to the proper needs and requirements of the assured. He shall make such suggestions as to any changes therein, as he may deem advisable.

(2) Throughout the life of any such contract the Virginia resident agent shall be under the same obligations to the assured with respect to servicing the contract as he would be if he alone had negotiated it. Where a Virginia resident agent is associated with the writing of such contract by a Virginia licensed non-resident broker, he shall respect the ownership of the expiration by such non-resident broker as is incorporated in the principles of the American Agency System and when requested by such non-resident broker render his assistance to secure the renewal or continuance of the contract.

Very truly yours,

(Signed) Oscar H. West, Manager.

[fol. 377] Cross-examination.

By Mr. Christian:

Q. Please say whether you are or are not a general agent for the National Surety Corporation?

A. I am not a general agent for the National Surety Corporation.

Q. What are you with reference to it?

A. A regional agent.

Q. What is your agency relationship to Employers Liability?

A. General agent.

Q. What local agents, other than mere solicitors employed by you, report to you or are supervised or assisted by you for the Employers Liability or for the National Surety or both?

A. You want me to give them by name?

Q. You can state the number first, if you want to. I am not talking about solicitors; I am talking about people who have contracts with the company?

[fol. 378] A. Under our set-up now all of our solicitors have contracts with the company. I think I am correct in

that statement. We have about four or five that we license as agents, two of which are domiciled in our office and three of which are not domiciled in our office.

Q. With what company do they have contracts?

A. Employers Liability Assurance Corporation. They are Blake & Dudley, Inc., L. W. McVeigh, Inc., and Thomas T. H. Hill. There may be others but they are all I can recall at the present time.

Q. Those are real estate agents that also conduct an insurance business in Richmond?

A. Yes, sir, in two cases. The other case is a man who lives outside of Richmond.

Q. What is his business other than insurance business?

A. He happens to be the Deputy Clerk of King William County.

Q. And as a side issue he is an agent under you of the Employers Liability?

A. Yes, sir. I think you would say as a side line he writes insurance. However, Blake & Dudley and L. W. McVeigh, Incorporated, both have insurance departments, keep all records and write fire insurance as direct representatives of companies. Their volume is not sufficiently large to have a general agency contract and, therefore, we are able to handle the business for them on an agency contract.

[fol. 379] Q. Will you give the information as to what is the maximum amount of annual premiums on casualty and surety risks for any one assured that are paid through your office?

A. One year one client paid me twenty-four thousand and some hundred dollars.

Q. When was that?

A. That has been some years ago.

Q. I am talking about the business that is permanently in your office, Mr. DeJarnette. I am trying to get an idea of whether you are a representative, by and large, of the small assured or the medium sized assured or large assureds with national coverage.

A. If you refer to my experience, for nine years I was employed by Tabb, Brockenbrough & Ragland who, I suppose, are one of the largest agents in the state and at that time I had contact with certainly some of the larger assureds of Virginia. My office at the present time, conducted

as DeJarnette & Paul, doesn't enjoy as many large accounts as those larger offices enjoy.

Q. Do you enjoy any large accounts?

A. Yes, sir.

Q. Won't you please say what is the largest annual premium involved?

A. I couldn't tell you that, Mr. Christian, without going to my records.

[fol. 380] Q. Are you able to say in how many states the coverage placed with you by any one assured is located?

A. Several.

Q. Several states?

A. Yes, sir.

Q. You say you have as many as one assured which has coverage in several states?

A. Yes.

Q. By that word "several" do you mean three states or four or more or less?

A. More than that. I couldn't name right off how many there are without going to my records.

Q. How many assureds are there that you represent that have coverage in several states?

A. I couldn't give you that information without going to my records.

Q. Could you say whether it is one or more than one?

A. I should say there are several.

Q. Can you say what sort of risks they are?

A. Casualty risks.

Q. What lines of casualty insurance?

A. Automobile, general liability, compensation, burglary, surety.

Q. You said on your examination in chief that you were informed that casualty agents, generally speaking, never countersigned casualty contracts?

A. That is my understanding.

[fol. 381] Q. I will ask you whether there are any casualty insurance agents in Richmond that you think are leading agents in the sense that Gibson, Moore & Sutton and Davenport and Tabb are, or aren't those three distinctly leading agencies in Richmond?

A. In what particular?

Q. From the standpoint of volume?

A. I should say they produce the largest volume of any three agents in Richmond.

Q. Do you know whether Davenport countersigned before this Act was put in operation or not?

A. I think my memory serves me correctly in stating that they did not.

Q. I will ask you the same question about Gibson, Moore & Sutton?

A. I never heard that they did and I can't remember that I ever heard that they didn't.

Q. I ask you the same question as to Tabb?

A. I heard Mr. Tabb today say that he didn't countersign any.

Q. So you are certain that Tabb does not countersign?

A. Yes, he told me that.

Q. And you don't believe Davenport does?

A. I worked for Tabb for nine years and we didn't countersign any then.

Q. You don't believe Davenport countersigned any before this Act and you don't know about Gibson, Moore & Sutton?

[fol. 382] A. Only in those cases, Mr. Christian, where the broker associated the agent with him, due to the contact that the agent had with the assured or due to other reasons that I cited in my direct testimony.

Q. And outside of Richmond you don't know anything about the big agencies?

A. Except what I have heard the agents themselves say.

Q. I asked you about Perry and Justice. Aren't they the two biggest agencies outside of Richmond in the state?

A. I wouldn't say so.

Q. Who would you say is—Lunsford?

A. I expect Lunsford is one of the biggest.

Q. Is there any reason under this new law to think that the generality of the hundreds of agents throughout the state of the various companies will countersign this business that is produced outside of the state or isn't it more plausible to think that each company will have a few of its agents, out of the much larger entire number of its agents, who will do all of the countersigning for the companies?

A. My information is that the companies will send the countersignature business to the agents that can best serve the assureds; in other words, those assureds in their vicinities.

Q. How would you work that where a fleet risk covers all over the state of Virginia?

A. What type of fleet?

Q. Automobile fleets. I don't know of any other kind.

[fol. 383] A. It would be given, from my information, to the agent nearest the risk, where the home office or the Virginia office is.

Q. I understood you to say that a premium rate is arrived at by adding together the pure loss ratio or pure premium and the acquisition cost; is that correct?

A. Right.

Q. Do you consider taxes and license fees as a part of loss ratio in your definition or acquisition cost?

A. They are not in the pure loss premium, as I understand it.

Q. Do you understand that they are in the acquisition cost?

A. Yes, sir.

Q. Where do you understand that the factor of profit and contingency is included—in the loss ratio or the acquisition cost?

A. It might be in both. For instance, if they go over to the Corporation Commission with a formula that the rates are predicated on a sixty percent loss ratio basis and at the end of the year the loss ratio was only forty-eight percent, then they would make a twelve percent profit out of the loss ratio end, but the actual profit, as I understand it, as permitted by the law, is put in the acquisition cost.

Q. Where do you understand the expense of home office administration is included—in the pure premium or loss ratio or in the acquisition cost?

A. I understand it is in the acquisition cost.

Q. Where do you understand the unallocated expense of [fol. 384] claim adjustment is included—in the loss ratio or acquisition cost?

A. I understand it goes in loss ratio. Contingent contracts are so charged, as I understand.

Q. Did I correctly understand you on your examination in chief to say that when you want to sell an automobile liability policy that you told your prospect that you would inspect his cars and drivers for him during the life of the policy, that you yourself would do that?

A. My office does it to a great extent and then on fleet risks whenever a safety talk is made my office, in numbers of cases, makes those safety talks.

Q. When your office inspects these cars during the life of the policy, what does it inspect them for?

A. Well, if we find a risk with the bumpers of the cars all bent up and the fenders all bent up, we know then that they have been having frequent accidents, a lot of times from which no claim has been reported, and we check that to determine whether or not the prospective assured knows what kind of risk it is. For instance, if we write a risk and the company notifies us that these people have had a bad experience, then we are embarrassed to have to take up the policy. We try to ascertain that information before insuring the risk.

Q. Am I correct then in my understanding that the purpose of your inspection is to see whether the bumpers are battered up? Is that the purpose of this inspection that goes on through the life of the policy?

A. No, sir, but you asked me, as I understood it, before the policy was issued.

[fol. 385] Q. No, I stated this to you, that I understood you to say when you were soliciting the prospective assured it was a part of your sales talk to him to tell him that you were going to inspect his cars and drivers during the life of the policy.

A. In numbers of cases we check the motor numbers to see that they are proper and check the equipment to see whether or not the description of the equipment is correct.

Q. That is at the outset of the risk?

A. Yes.

Q. I understood you to say you did that during the life of the policy?

A. That is correct.

Q. What are you doing after the policy is in effect and during its life? What sort of inspection are you making?

A. After the policy is in effect?

Q. Yes.

A. Our office doesn't make inspections but the engineering departments will make inspections to determine what kind of condition the equipment is in.

Q. I am asking you whether you do tell a prospective assured or not that you are going to inspect the cars throughout the life of the policy? Did you intend to be understood as saying that or not?

A. It depends entirely upon the risk, Mr. Christian. If we know that the risk is one that does require inspection we do tell them that. If the risk doesn't require, in our

opinion, that inspection, we don't make any personal inspection but the engineering department which we have charge of and whom we direct to make inspections, and who [fol. 386] make them in connection with our office, does do that. For instance, our engineer will come into our office and say, "Mr. DeJarnette, I have an inspection slip for eight, ten or fifteen risks," and he will want to know something about the risks. I will give him that information. In a number of cases we go with him. For instance, when the pay roll auditor comes we lots of times go with him to the risk.

Q. You made a statement just now that you claimed you had authority over the engineering department of your company; is that correct?

A. So far as our risks are concerned, yes.

Q. They have to obey your orders?

A. They have to obey our orders so far as the inspection and handling of our risks are concerned. They have certain routine prescribed by the company that we have nothing to do with. The company may say that the risk may be inspected twice a year or four times a year. We can't stop that but whenever any recommendations are made to our assured, we get a copy of these recommendations and we take up those recommendations with the assured to see that those recommendations are complied with, if reasonable. If we don't think they are reasonable we see that they don't comply with them and explain to the company and show the company why those recommendations are not reasonable.

Q. That is the extent of your authority over the engineering department?

A. I wouldn't say that covers the whole scope of it but any time we want to order an inspection we have the privilege of doing it. If I have a risk like I did this morning——

[fol. 387] Q. Do you have the power to hire and fire engineers?

A. No, sir.

Q. Do you have the power to say how they shall come and go and when they shall come and go?

A. In reference to our risks.

Q. Do you determine their salaries?

A. No, sir.

Q. What you really mean is that under the regulations of your company the engineering department is supposed

to comply with the proper requests of the producing agents and furnish them cooperation, isn't it?

A. If that engineer planned to go to Norfolk today and I have a risk that I think is of sufficient importance to ask him to cancel that trip to Norfolk, I do it and he makes an inspection of that at my request without going to his home office or without getting permission from his home office. He knows in his own mind from the nature of the risk whether or not my request is reasonable.

Q. Suppose he doesn't think it is reasonable?

A. I have never had one object to it that I know of.

Q. About this matter of your getting releases signed in third party claims, is it the habit and practice of your company, when a liability assured has a claim made against him and the claim is considered good in law, to ask you to negotiate the settlement and procure the release?

A. We have a gentleman's agreement with our company when they pay out money to a third party that we are notified that they are going to settle the claim with such and [fol. 388] such a party. They tell us about it and if we think it is to our advantage to take those releases and go to that party, we have the privilege of doing it and in numbers of them we do get the releases signed and deliver the drafts.

Q. The purpose of that, I take it, is to enable you to make contacts and get new business, isn't it?

A. That is partially the purpose of it, yes, sir.

Q. You are doing that because you want to do it, are you?

A. A company doesn't require me to do it. They think it is to their best interest to let me do it and, therefore, they acquiesce in my request.

Q. How is it to their best interest? Because you are so expert that you will get the right man to sign that thing and get it in the right form and they couldn't do that without your help, or are they helping you form new contacts?

A. I just answered that I used it for contacts.

Q. Is it a business-getting thing for you?

A. Not entirely. I want to see that my assured is satisfied with the settlement. We have had numbers of cases where a company claim man went out and settled a loss and he went ahead and paid the claim without our knowing anything about it and then when we went, at the end of the year, to the assured and said, "We paid out $700 on this claim," he threw up his hands and hollered and said, "That claim wasn't worth $700; your adjusters have paid too

much money and we want you to watch those things. This is our premium you are spending. Our rate is reflected by these claims that are paid out and we don't want you to let these things be paid unless we know something about it." That is the reason we make that requirement, or one [fol. 389] of the reasons.

Q. In reference to what you said, I want to know when you make those inspections that you have explained to this prospective assured that your office is going to make, what you are looking for?

A. We are looking for the condition of the equipment how the drivers are handling the equipment, whether or not new equipment has been substituted, whether or not equipment has been changed. Some equipment takes one rate and some takes another and the only way you can properly service a risk and see that the proper premium is charged and that they are getting the best efficiency out of the equipment as to accident frequency and the type of drivers that they use is by inspection and you have to be in personal contact with those.

Q. Who does that, the producing agent or the inspection and engineering department of the company?

A. In my office we do it ourselves for our own information, for our own knowledge of the risk. A company also, in a number of cases, sends its inspector to inspect the equipment.

Q. You carried some liability on my car for a number of years, didn't you?

A. Yes, sir.

Q. You never inspected it in your life did you?

A. Yours wasn't fleet risk.

Q. You don't do this except on fleet risks?

A. That is the only way we do it. We couldn't go about inspecting individual cars, no sir. I thought you were referring to fleet risks. Fleet risks are the only ones that [fol. 390] take an experience rating.

Q. And you claim to be qualified to conduct inspections of that sort and that is a part of your duty, as a producing agent, to make those inspections?

A. Yes, sir, we do it constantly.

Q. And you claim that is so of all producing agents?

A. To my knowledge, I expect they do. I offer that

service from my office and they have a fair share of the business. I expect they offer the same service from their offices.

Q. How did you acquire the knowledge of gasoline engines and mechanical knowledge sufficiently to conduct these inspections?

A. I don't claim to have any knowledge of gasoline engines.

Q. Do you dress in overalls and get down underneath the car when you make the inspection?

A. No, sir.

Q. You just stand off and look at it?

A. Well, it depends entirely, Mr. Christian. For instance, a four-wheel truck takes one rate and a six-wheel truck takes another, what we call a tractor and trailer. The average assured doesn't know that unless he has had experience. I have had numbers of cases where I was traveling down the road and I saw a name of my assured on a truck going down the road and I immediately remembered that I didn't have that type of equipment covered; I didn't have a trailer covered. I immediately went to him and told him that that equipment had to be changed and any time when we see our risks about the streets we watch them to see what they are engaging in.

[fol. 391] Q. And that is what you mean when you speak of inspecting?

A. Oh, no. I say that causes inspections.

Q. Do not the owners of these fleets have people who spend their lives as mechanics and it is their business as automobile mechanics to see that those cars are kept in proper shape?

A. Very few of them. Some of the larger national risks do but very few of the Virginia risks have that type of service.

Q. Do I understand that you hold out to your assureds that you are going to inspect their equipment from a mechanical standpoint and ascertain defects in the equipment and things that ought to be done to make it operate better?

A. I have one fleet on my books that I personally inspect every sixty days, as to the condition of the rear view mirrors, the condition of the windshields, the condition of the stop lights and the condition of the brakes.

Q. Does Employers Liability Assurance Corporation have an engineering and inspection department?

A. Yes, sir, domiciled in Richmond.

Q. And is it the duty of that department in Richmond to do what you are talking about?

A. Yes, sir, and they render a further service. They go into that same thing but here is the situation; if I take a risk and let it develop a bad loss ratio, then the company says, "We don't want that risk," and we do this so that we can try to give the assured an additional service to keep the risk good. We know that those things do keep the risks. They tell.

Q. Where did you get the training to enable you to say whether the equipment is in good shape mechanically or is not?

[fol. 392] A. Just by experience. I think you can tell, if you look at the rear view mirror, whether it is cracked or not, whether it is badly worn. Some of them have this quicksilver on the back of it and that wears out and a man can't see. You can look at that.

Q. Do you also do boiler inspections for your assureds?

A. No, sir.

Q. Elevator inspections?

A. No, sir.

Q. You confine yourself to automobiles?

A. Not entirely. We inspect compensation risks too.

Q. Do you employ any mechanics to assist you or do you do that personally?

A. No, sir, my partner and I do it.

Q. Haven't you been serving in the Legislature up here for good many years?

A. Not for a good many years. I served one term.

Q. I suppose you get somebody else to do it while you are serving up there?

A. I lost a lot of money when I was serving in the Legislature.

Q. About these changes in the equipment, am I not right that an ordinary fleet automobile policy has an automatic provision for coverage of new material?

A. Yes, sir.

Q. And coverage of that new material at the appropriate rate?

A. Yes.

Q. So to the extent that your inspection is desired to procure that for the assured, he would get it anyway, wouldn't he?

[fol. 393] A. That is adjusted at the end of the policy period.

Q. About this checking up of the contract when you are asked to countersign policies covering in Virginia but produced outside of Virginia, that is being done day by day and year in and year out as to all automobile contracts by the Virginia Rating Bureau, is it not?

A. I understand that they determine whether or not it is correctly rated.

Q. They are doing just what you said you did?

A. Not all of it.

Q. They are supposed to do it, aren't they?

A. I don't think so.

Q. What about the workmen's compensation contracts? Isn't there a similar bureau that is supposed to check up all of them and see that they are in proper shape?

A. They don't go to the risks themselves and determine whether or not the classification is correct. For instance, the manual states that if you have certain nurse's or doctor's services you get a credit in the rate and you find a risk sometimes that may be furnishing that service and yet obtaining no credit in the rate.

Q. Wouldn't they catch that just as well as you could catch it? Isn't that what they are supposed to do.

A. I knew a case that went on for about six years in Virginia that nobody caught and a live-wire agent caught it and got the business.

Q. Wouldn't they be supposed to catch this case that you told about where you found out recently an inadequate rate [fol. 394] was being charged on an automobile policy?

A. I imagine that they do. I don't know definitely. Of course, all of those bureaus are subject to error and all of those bureaus make numerous mistakes constantly. Sometimes there is the wrong information on the policy.

Q. About this Richmond organization which asked you if there wasn't some way he could deal directly with you instead of dealing through the broker and you told him no, that, as far as you were concerned, you had gotten the business from the broker and would have to respect his rights? Do you remember that case?

A. Yes, sir.

Q. How do you opine that that organization was dealing through that broker if he didn't want to?

A. I think it was a class of business that probably wasn't pretty generally written.

Q. But you think that Richmond organization went up to New York, or wherever it was, and dealt with that broker because it wanted to, don't you?

A. It was a specialist class of business. All of the other business is written locally.

Q. You didn't point out to that party that the New York broker was better qualified than you to handle that risk?

A. We didn't get into that discussion. I told him that my service was his service. He evidently thought I was well qualified. He called me, although he didn't buy the contract from me.

Q. What sort of business was that, that concern?

A. I still think that is a matter of private contract, isn't it?

[fol. 395] Q. Yes. I just asked you whether it is a bus line or tobacco factory or beauty shop or what it is?

A. It was a merchant.

Q. A retail merchandising store.

A. Yes.

Q. Not a member of a chain, you said?

A. No, sir.

Q. You spoke of your territory including Henrico and, I think you said, five adjacent counties. Does your territory include the city of Richmond?

A. Yes, sir.

Q. Is this business you have been countersigning since the Act went into effect all covered in your territory or is some coverage outside of your territory?

A. I think there are one or two cases outside of my territory, premiums amounting to $10 each.

Q. Where are the locations of those coverages?

A. I think those were some bonds in Arlington County, probably license permit bonds or something of that type.

Q. Did you make any check-up of the contents of those bonds with the parties interested in the bonds to see that they were proper forms of bonds?

A. We determined that they were the proper permit bonds as required by the state but as to the actual conditions surrounding that bond, it didn't make any difference. It was just a license permit bond and it wasn't necessary.

Q. You mean an automobile license or what?

[fol. 396] A. No, sir. I think one of them was a material bond, to furnish materials to some particular people—supply bond, I think they call it, and the other one was a cleaner's bond, I think it is, required by the state. I am telling you from memory.

Q. Why did they happen to send those bonds to you instead of to Arlington agents?

A. As I understood, through mistake they were sent to the home office or, at least, the branch office of the company here and they couldn't countersign them and I countersigned them for them.

Q. Do you know how many agents all told the National Surety has in Virginia or the Employers Liability has in Virginia?

A. I imagine that the National Surety has more than a hundred. I think the employers probably has a few more than a hundred.

Redirect examination.

By Mr. Staples:

Q. Mr. DeJarnette, you spoke of the pay roll auditor inspecting the books of an assured under a workmen's compensation policy. Why was that auditor inspecting those books?

A. The compensation policy is written with a deposit premium and at the end of the year the books of the assured are audited to determine the final adjustment of the premium.

Q. Who does that auditing?

A. A company representative.

Q. Is it necessary for the insurance carrier, under a policy of that type, to examine the books of the assured in order to determine the amount of the premium?

[fol. 397] A. Yes, sir.

Q. Then, as I understand it—or do I understand you correctly—in every case where an insurance carrier issues a policy under the workmen's compensation law of Virginia it is necessary for the insurance company's auditors to examine the pay roll accounts in order to determine the proper premium at the end of the year or any given period; is that correct?

A. That is correct, yes, sir.

Q. Do you know of any type of casualty insurance policy in which the companies do not render, through their servicing departments, some service in Virginia in connection with the policy if it is a Virginia coverage policy?

A. You mean claim and inspection service?

Q. Any type of service, including claim and inspection service?

A. Small residence burglary policies or residence general liability policies are not inspected by inspectors.

Q. Suppose there is a loss?

A. If the loss occurs then it is reported to the agent's office and the agent reports it to the claim department and the claim department handles it in cooperation with the agent or possibly direct.

Q. What do you mean by a residence general liability policy?

A. A policy that protects the residence owner from suit by injuries on his premises to anybody other than his family or his employees, such as the milkman, the news boy, salesmen, or it is possible to be sued from doing work on premises.

[fol. 398] Q. Doesn't the insurance carrier in most cases undertake to defend the suit that is brought?

A. Yes, sir.

Q. That is, through their legal department or through legal employees, they do render that service in case of any loss happening under the policy; is that correct?

A. Yes.

Q. In a case of a plate glass loss those policies usually provide that the company shall have the option either to pay the amount of the loss or to replace the glass, do they not?

A. I think so, yes, sir. It is customary in all cases to replace the loss. I don't believe I ever knew of an insured taking a cash settlement rather than replacing the glass. I can't think of any.

Q. Mr. Christian asked you about fleet policies which provide automatic coverage for additions to the fleet. In the event of the acquisition of a new truck, in the case of a fleet policy, or a half dozen new trucks and an increase in the premium by reason of that, what becomes of the commission on that increased premium?

A. It goes to the producing agent.

Q. The original producing agent?

A. Yes. The same thing happens to the additional premium under a compensation audit. It is collected by the agent and paid through his account and he takes a commission on it.

Q. Then the mere fact of acquiring a new truck or trucks or vehicle and adding them to that fleet amounts automatically to a new contract of insurance insofar as those new trucks are concerned, does it not?

[fol. 399] A. Yes, sir.

Recross-examination.

By Mr. Christian:

Q. When you made reference a while ago, I think, to Blake & Dudley as general agents, did you mean they have a commission scale of a general agent?

A. I didn't make that reference to my knowledge.

Q. What is their status?

A. They are agents under my office.

Q. With a local agent's commission schedule?

A. Yes, sir.

Q. Having reference to what Mr. Staples asked you about customs and practices of the companies in respect of acts performed in the localities of coverage, do you know of any contract that either your surety company or your casualty company issues that requires the company to do anything in the State of Virginia? If you do, then I will ask you to introduce the contract form in evidence.

A. You mean my contract with the company or the contract that is sold the public?

Q. No, I mean the surety bond or the casualty insurance policy of either of your companies. Do you know of any that you can introduce in evidence here that requires the company to do anything in Virginia? I will exclude from that the liability policies and their requirement that suits be defended which, of course, must be done either through an agent or through an independent contractor.

[fol. 400] Q. Go ahead and say whether you have any contract you can introduce in evidence that obligates the company to do a single thing in the place of coverage with the exception of defending suits.

A. To my knowledge there is no specific requirement of inspection service or proper rating or proper classifica-

tion of the risk but competition has been so keen in the business and common usages and practices require that these things be done to control the business.

Q. As a matter of fact, if the company wanted to, it could pay claims and not defend the suits, couldn't it, even under the liability policies?

A. Yes.

Q. But you don't know of any contract that requires anything to be done in the state of coverage that your companies issue?

A. There is no contract, as I stated before. The practices in the business require these services be rendered for the agents and companies to obtain the business.

Q. The practices of the companies also require that claim and inspection service be furnished outside of the place where the automobiles are principally garaged and used, if occasion for claim or inspection service arises in another state, don't they?

A. The inspections are made where the cars are domiciled. They have no way of contacting the car except where it is domiciled.

Q. The car doesn't have to stay in the spot where it is domiciled all the time, does it?

[fol. 401] A. No, sir, the rate is determined by the place that the car is garaged at night.

Q. But the service is performed wherever the car moves through the United States, where there is an occasion for such service, isn't it?

A. Oh, yes. If an agent of my company in New York had one of my assureds to call him, he would be glad to render service and I have done it many times for policyholders traveling in Virginia, having accidents. I have been called out of my bed at night and furnished bail bond service to policyholders of other companies. I have called other agents and gotten them in touch with the man for the company they represented that covered that particular car. Living up in Ashland, as I do, a number of accidents happening on Route 1, that is quite frequently done as the traffic officers up there know that I happen to know the agents of the companies and where they can find them and when an accident occurs they call me up and say, "Here is a man with a policy in a certain company. Can you tell me where he can get service?" I will refer them to the agent and if it is my company I handle it. I have done

that a number of times for the Travelers when I was with Garnett Tabb. Mr. Christian, I expressed today an unwillingness to tell you about the annual premiums of my firm and it seems to me it is proper I should tell you what they are and I therefore state that in the casualty and surety lines the annual premiums through my office are about $46,000 and in the fire lines about $45,000.

[fol. 402] ROBERT I. BOSWELL, a witness called on behalf of the defendants, and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. State your name, age, residence and occupation please?

A. Robert I. Boswell, Henrico County, Virginia; 40; general insurance.

Q. How long have you been connected with the insurance business, Mr. Boswell, and state generally the history of your connection with this business and different positions you have occupied?

A. I am completing my nineteenth year. I organized my own agency in '32 and subsequently Mr. Curtis, who had been with the National Surety as manager, came with me in 1935. The firm is now Boswell & Curtis.

Q. You are now occupying what particular relationship to what particular companies?

A. I am agent of the National Surety Company, New Amsterdam Casualty, Mechanics and Traders Fire, the Newark Fire, Globe & Rutgers for marine, the Sun for marine, and we do have an agency license with the Fidelity and Deposit Company. I have been strictly a commission man since 1932, not employed by a company.

Q. During what period of time covered by your experience have you been what is called a company representative or salaried employee of an insurance company or companies?

A. I was on a salary from October, 1920, until July 1, 1931, with various companies and in various capacities.

Q. In what capacities have you had relationships as com-[fol. 403] pany representative with companies?

A. I have just stated. I was first Special Agent and Manager for a state and manager for a New York office

and an officer in charge of a West Coast territory and then again manager for a group of states.

Q. You have then occupied relationships similar to those occupied by the branch managers in this suit, have you?

A. Yes, sir, I have been manager of an office in a city just as they are now. It so happens, however, that the company I was manager for was not a multiple line company like the National Surety. In the Consolidated we wrote all lines of casualty with the exception of compensation and boiler.

Q. What has been the nature and extent of your experience insofar as the same has reference to the customs which have been established in the business insofar as same relate to duties and functions of salaried employees such as company representatives and duties and functions of commission agents, their method of compensation and other relevant matters.

A. Of course, a special agent or manager works for one company, whereas an agent may represent several, as a general thing, unless if is a group. The functions of a salaried employee are to further the company's business, to appoint sub-agents, such as I am now, to report to him and to work with those agents, be available to the agent for service and in the majority of instances, identified particularly with the surety business, the branch manager would have a larger underwriting authority than the agent. The branch manager is the clearinghouse between the agent and the home office in the submission of certain bonds. [fol. 404] That branch manager is placed there for good reason by the company, to look out for the company's interests, to see that collections are made, to keep an eye out on the classes of business that the company believes to be more profitable, and to work with the agents in an effort to have them produce those classes by giving them the benefit of his wider knowledge. Does that answer it?

Q. That answers the question in part. What I had in mind particularly was the extent of your experience throughout the State?

A. Well, I was manager of the National Surety's office. I started first as a Special Agent. I traveled continuously for about two years. At that time I think there were five hundred and twenty-two banks in the state and I had been in five hundred and eighteen of them when I went to New York. There were a hundred county seats and I think I

had been in all but one. It was my duty to go around and get a favorable connection at every place where there was one available and, if there wasn't one available, try to make one. After that connection was made it was my duty to educate the agent, as best I could, in the lines of cover that he could solicit and which would be money-makers for the company, to make periodic check-ups with him, examine the court records and see that the bonds that he had signed were reported, to get termination evidence on the bonds as they were finished in the court, to see that his premiums were paid and be available in case of claims.

Q. When you were doing that work what position did you occupy?

A. I was first Special Agent and then Manager on a strict [fol. 405] salary basis.

Q. Did you receive any commission at all on any business that was transacted through your office?

A. No, sir.

Q. Did any other of the salaried employees of the company receive any commissions?

A. Not to my knowledge.

Q. Can you state whether or not the general custom of transacting the casualty and surety business in Virginia is similar to that which was adopted by your company?

A. The general custom, so far as I know, is that company employees are on a strict salary basis. I don't believe I have ever known of any change from that. I have heard of them but that wouldn't be evidence.

Q. If there are any such arrangements made, they are exceptions to the rule rather than the rule, are they not?

A. Yes, I would say so.

Q. What is the difference in the relationship of a special agent or a general manager or other company representatives to the company and a commission agent's relationship to his company?

A. Well, a commission agent is an independent contractual entity. He does not operate as a salaried employee. He is free to go and come as he pleases. He doesn't have to put in so many work hours unless he feels that it is encumbent on him to do so for his world's goods. The fact that a commission is involved would make him look with a brighter eye on some situations, whereas a branch manager of a company is there for many purposes, but one [fol. 406] of those is to protect, first of all, his company's

interests and not write any business that he doesn't believe the company will eventually make money on. I would say though, in defense of the agents that I have just maligned that in a number of instances his reason for writing business is sometimes a matter of ignorance on his part. He has not been schooled in the various lines that the company knows are danger points.

Q. What is the relationship between a branch manager or company representative and the resident commission agent in Virginia?

A. The difference is in the method of compensation, I would say, primarily. The branch manager gets a certain stipulated salary whether or no. That salary is usually based on his volume and whether the business produced is good business, money-making business. The commission agent is a very definite factor between the risk and the company. He is a guarantor of the premium and, in some instances, I imagine, the commission agent has as much authority as a salaried employee in his underwriting but that does not relieve him of the financial responsibility for the premium, whereas the company man, if he has a risk that doesn't pay, it just goes into past dues and not out of his pocket.

Q. Who does the commission agent usually report to where there is a branch manager in a state?

A. If there is a branch manager in the state it is almost an invariable custom that the commission agent reports to that branch manager. I imagine that there are exceptions to that. There are direct reporting contracts. In [fol. 407] our own agency we clear our daily reports on all business through the two offices provided here by the company. It is more expeditious to do so and it saves postage.

Q. What contact does the branch manager have with the prospective assured, if any?

A. Well, that is rather difficult to define. In some instances he may be very close to the prospective assured. He may give the agent a tip that will result in eventual writing of the business but, as a general thing, he is there in an advisory capacity to assist the agent and call on the assured with the agent, to check on the agent and see if the agent is making any mistakes in the presentation of coverage and give the agent rates. He doesn't do any soliciting as such, except through the agents. That is established practice. But there are, of course, risks that are influenced

by the salaried man for the commission man's account. That is inevitable.

Q. His contacts then, as I understand it, with the prospective assured are on behalf of the commission agent, generally speaking, so far as the compensation to be derived from the business is concerned?

A. That is correct. Our companies advertise that fact very extensively, that they take no direct business.

Q. What do you conceive to be the established custom and practice with reference to the functions and duties and obligations of the commission agent in Virginia to the assured or the prospective assured?

[fol. 408] A. The commission agent is operating in more or less a dual capacity. If possible, he is representing and acting as a buffer between, should there be trouble, two masters. He must look out for the interest of his company and he must look out for the interest of his assured. The first thing that he must do is to inveigle the assured into believing that the business should be placed with him and to service that business through its continuance in a way that he is fairly certain of getting a renewal and in a way to give service if anything should happen. Of course, it is a very highly competitive business and a contract of insurance is nothing more than a piece of paper until something does happen and when that takes place it is certainly up to the agent to see that all hands are amicably taken care of.

Q. Would you say that he is an impartial agent as between the assured and the insurance carrier or that he is partial to either one or the other?

A. Mr. Staples, I believe that would depend on various cases. He should be impartial but there is little reason to believe that the right thinking agent who represents good companies is going to have any difficulty at all with either the assured or the company. My relationship is most pleasant. I don't think I have ever seen a legitimate claim denied in my life in my agency.

Q. What types of casualty insurance does the company you represent issue?

A. We write all forms, with the exception of boiler, for the New Amsterdam. We do have agency licenses with the [fol. 409] American Employers for boiler but our boiler business is negligible. It doesn't amount to anything. We

write accident and health, automobile, compensation, elevator, burglary, plate glass and general liability.

Q. Some question has been raised in this case as to whether or not a commission agent who writes a policy has performed his entire obligation or duty with respect to that policy as soon as the same is written and delivered to the assured or whether there is a continuing obligation and duty upon him during the life of the policy. I wish you would please state what is your opinion as to the established custom and practice in Virginia on that subject.

A. My thought is when a contract of insurance is on the books of an agency that the service of the agency has only just begun. Of course, it has started with getting sufficient information together to be enabled to intelligently write the contract and then it is definitely up to the agent to maintain a sufficient force to service whatever may happen under the contract during the premium year. We further try to make periodic visits to our customers to try to better their loss ratio and point out to them any unusual hazards that may be around their plants. We have been most successful in taking road contractors' compensation and, by intelligently presenting the idea of safety to the assureds, we have taken what at one time was supposed to be a very hot line and have been consistently making money on it for the company and, by doing so, we have contractors engaged in hazardous occupations that have large experience credits on their compensation policies.

[fol. 410] Q. What is the nature of service that you render in connection with these contracts you speak of with these contractors?

A. We have two men that are employed by the company, safety engineers. When a contractor comes to us for a bond and subsequent insurance, we have this man line up his job for him and he is usually there on the job before the contractor is. During the prosecution of the job there are periodic inspections and safety is talked to the foremen by the inspectors and safety engineers until they, in turn, kick out any laborer who is not behaving himself, and other safety precautions are recommended such as proper lighting, signaling, and things of that nature.

Q. To what extent is that service performed by you and men in your office and to what extent by the engineering service of the insurance carrier?

A: We are not charged, as agents, with performing that service but due to the fact that we feel we must keep up the contact on account of the highly competitive business that we are in, we invariably try to be on these jobs personally during their prosecution at least two or three times. The safety engineer reports to us if the assured is not using the recommendations that he gives him and then it is up to us to go in and, in a nice fashion, make the assured see that he is really spending his own money if his loss ratio goes up.

Q. Do you consider it one of the functions of the commission agent to see that the assured receives the full benefit of the engineering service which is provided by the insurance carrier?

A. Yes, sir, because it saves the insured money. After [fol. 411] all, that is one reason we are in business, I suppose, to point out to the assured where his premium dollar goes and how he can make that dollar go far.

Q. Is there any considerable factor of the premium which is devoted to the payment for that type of service by the engineering staff of the insurance carrier or do you have any knowledge on that subject?

A. I believe that in the rate structure there is a certain percentage allocated to that but I am not prepared to say how much in any of the various lines of insurance.

Q. What about the service of the commission agent in connection with contractors' bonds; that is, to insure the performance of a building contract, for instance?

A. Well, first of all, speaking for my own agency, we are given certain authority which is regulated by a letter of instruction. If we solicit a contractor's bond and are successful in getting the application from him, then we, first of all, see that the risk meets the financial requirements that have been set down by the executives of the companies we represent and we must then assure ourselves that the contractor is not biting off more than he can chew, that he is familiar with the work, that he has the proper type of equipment for the work. We must sell him on the idea that he does not want to overload himself and take on more work than he can finance. We try to demonstrate to him that we, as the surety, are lending him credit instead of cash and we want to make sure that he doesn't abuse that. We then, in a number of instances, advise with the contractor as to sub-contractors and sub-bids. We try to keep

[fol. 412] on hand a complete record of similar work that has been bid on as to unit price so that he may avail himself of that information.

Q. Do you, and other agents engaged in that line of coverage, familiarize yourselves with the various contractors who might be called on to bid on a building or construction contract and just to what extent do you do that?

A. After a certain period of time in business you get to know the contractors and what part of the contract your general contractor will be interested in and you develop a type of clientele among the subcontractors who are willing to give prices with immense profit to the general contractor. We try not to do business with contract brokers that get a job and "sub" it all out at rock bottom, hard squeezing, prices. We try to keep both the general and subcontractor happy.

Q. Do you have any considerable number of those contracts or construction bonds which come from contractors who live outside of the state or engaged principally in business outside of the state?

A. We do have some very good clients that are not domiciled in Virginia. As a general thing most of them come from North Carolina, for some reason.

Q. Are any of those sent to you by North Carolina insurance agents?

A. No, sir, we endeavor to bring the idea of our service before the contractor who is up here from North Carolina and try to get him, of course, to do business with us and in [fol. 413] a number of instances, if he has some local agent who has been taking care of him down there and he wants that local agent to share in the commission here, if that agent is properly licensed by the state, we are agreeable to letting that be brought about.

Q. Do you render a man of that kind the same type of service, even if there is a North Carolina agent associated in the contract?

A. Yes, sir, as a general thing, we render him more service because he is in a strange land and he doesn't know the usual ramifications of the business here as well as he does in his own state. To continue, I think that it is very good sense for the contractor to identify himself with a local agent, due to the fact that we can be of considerable service to him. I have traced many hundreds of thousands of dollars of estimates through the Highway Department

and have gotten checks mailed out to our client several days before he would have received them otherwise, which permits him to take discounts and when you take discounts you save money. The checks would have eventually gotten to him, of course, but when the desk of the estimate clerk is cluttered up, it is a pretty nice thing to get $30,000 of money maybe four or five days ahead of time.

Q. Is the assured or prospective assured a customer or client of the commission agent or of the branch office or of the company in which the insurance is carried or proposed to be carried?

A. In some instances a foreign contractor will have his company preference. The surety business is very much like the banking business. Contractors do not like to dis- [fol. 414] turb their guaranty of credit because it is his bond to place and his money that pays the premium. As a general thing, we are agreeable, if he will be good enough to designate us the broker of record, to place it in whatever company he has chosen, that is, if it is a company that we can give business to.

Q. What is the general rule with reference to the holder of any type of casualty or surety contract as to whether or not the assured is a client of the company or of the commission agent who writes the business?

A. I would say, particularly in the isolated one risk assured, that nine out of ten of them do not know what company holds the cover, but the surety business is worked so definitely, not only by the commission men but by the men on salary, in developing the larger premium that I don't want to make a definite statement, but as a general thing it would be my opinion that the contractor would be the client of the company. Sometimes that can be met by argument and some contractors do business with three or four companies, but only recently I secured an application for a contract bond in one company and got a letter from the contractor the next week withdrawing it from that company and sending it to another company because the salaried man of the company had contacted him outside of the state and requested that the business go to his company and he was successful in selling it, although the application had already been given to me.

Q. What becomes of the business in a case of that kind, so far as the commission agent is concerned? Does that go to another commission agent?

[fol. 415] A. The company man didn't leave me entirely out of the picture. He didn't solicit the business for any other agent; he merely solicited it for his company. We get less commission from that company but we had to be satisfied with half a loaf in that case, which is a whole lot better than none at all.

Q. Did the company representative who solicited that man get any of the commissions?

A. Oh, no, sir. It just so happened that we did not have what is known as a top commission contract with the company whose salaried employee was more active than our salaried employee.

Q. Generally speaking, does the company, or the branch office manager, recognize the ownership of the commission agent in the business that he writes for the company through the branch office?

A. Invariably all of the companies that we represent subscribe to the American Agency System which definitely establishes the ownership of expirations. There is only one thing there. In contract bonds there are not any expirations. Each and every one stands on its own bottom and presents its own underwriting and commission peculiarities.

Q. What other types of indemnity contracts or insurance contracts do you personally come in contact with?

A. We endeavor to sell all lines of casualty. So far as indemnity is concerned, we have endeavored to develop a fidelity bond business and I suppose we have as fair a volume of court business as any one in the city.

Q. Do you have any automobile liability business?

A. Yes, sir.

[fol. 416] Q. I wish you would state what has been the custom in Virginia during the time that you have been engaged in the insurance business in this state with reference to the division of fire insurance commissions between Virginia commission agents and non-resident agents or brokers in relation to contracts negotiated entirely outside of the state?

Mr. Christian: The question and answer are objected to as being immaterial for the reason that the fire insurance business is an entirely different business from the casualty and surety business and no issues involved in it are involved in this case.

A. I took my first fire contract, I believe, on the first day of April, 1932, and the companies that presented themselves for agency held out as a plum the fact that they had various countersignature fees in the state that would be forthcoming in the event that I represented them but apparently the fire companies pass on to the local agents in various communities all risks that cover in the territories represented by those agents for countersignature and subsequent deduction from the account current. The fire companies, so far as I know, have no contracts in writing or I have no written contract with any fire company. They say, "Do you want to represent me?"

"Yes."

"Well, here are the supplies," and they send you a certificate of authority, but there isn't anything in black and white.

[fol. 417] By Mr. Staples:

Q. What has been the practice with reference to the division of commissions on a policy that is negotiated by a non-resident agent or broker outside of the state?

Mr. Christian: Is it understood that I am objecting to all questions about fire insurance?

Mr. Staples: Yes.

A. On fire countersignatures that we have obtained, sent us by the company, we invariably ask them for the name of the broker and check to see if he has a non-resident card and, if he has not, we set up in our account the entire commission. If he does have we surrender half of it to him, and the reverse is true on any risk that we may have which is outside of Virginia. So far as I know, this has been done since 1932.

Q. Do you know how long the custom has prevailed of associating the resident commission agent with fire insurance policies negotiated outside of the state where the coverage is in Virginia or in the territory of the particular commission agent?

A. I do not know how long it has prevailed but I am inclined to think it has been for many, many years.

Q. Has it prevailed as long as you have been engaged in the insurance business in Virginia, or not?

A. I am not prepared to say, Mr. Staples, because I didn't know anything about fire insurance until 1932.

Q. When was the first time that you were required to ascertain whether or not the non-resident agent or broker was licensed in Virginia before you were authorized to divide the commissions with him?

[fol. 418] A. As I recall, we were given the names of the brokers in 1932. I won't be sure of that.

Q. Then am I correct in my understanding, from what you have testified to, that ever since you have been engaged in the fire insurance business the Virginia resident commission agent has received half of the commissions accruing from all fire insurance policies negotiated exclusively outside of Virginia where the risk covered is within his particular territory in Virginia?

A. That is correct.

Cross-examination.

By Mr. Christian:

Q. Do you get general agents' commissions under the National Surety contract?

A. Yes, sir.

Q. How about the New Amsterdam?

A. We are general agents of that company also.

Q. How about the Fidelity and Deposit?

A. No, sir, just producers.

Q. How about American Employers?

A. The same.

Q. Do you have any sub-agents that work under you for the National Surety or the New Amsterdam?

A. Yes, we do.

Q. How many?

A. Under contract I don't know. We do a brokerage [fol. 419] business all over the state. Some of them are National Surety agents and some are not. I believe there are only two definite holders of National Surety contracts that clear their business through us here in the city—Davenport and Claiborne, Goodridge & Goddin.

Q. What is your territory for the National Surety Corporation?

A. I believe the contract reads "Richmond and vicinity" but it covers a multitude of sins.

Q. And you really are allowed to go all over the state and get business in other agents' territories?

A. And vice versa.

Q. When you go out to Wise County, Virginia, or up in Roanoke and get a bond for a county or city officer, do you have to give the Roanoke agent of the National Surety any part of the commission?

A. I have to do it to get the business, yes.

Q. You mean because he has an influence on the business too?

A. Of course he has.

Q. How do you usually divide with them? Do you take the overriding and they take the producer's commission?

A. Yes.

Q. And if you can get it without doing that, then it is just a case of more power to you, isn't it?

A. And economically more correct from my standpoint. In almost every instance, in business of that kind, the local agent shares in the commission up to his contract.

[fol. 420] Q. In other words, he has enough influence on the local people to keep you from being able to take that commission out of that county or city without giving him part of it?

A. That is right.

Q. You concern yourself, personally, principally with the surety business, don't you?

A. Yes, but we write about $50,000 a year in other lines.

Q. In casualty lines?

A. Casualty lines.

Q. One of these witnesses didn't want to say how much he wrote a year. Do you object to saying how much you write in surety premiums?

A. About $120,000.

Q. Do you have anybody working for you called a solicitor?

A. No, sir. We did have some solicitors but they cost us too much money.

Q. When Davenport and the other local agents that you mentioned, Claiborne & Goddin, send you business, they are just brokering that business with you, are they, and you get the overriding commission and they get the producer's commissions?

A. I think that Davenport has a regional contract with the company. That arrangement and that friendship down

there has been of very long standing which brought about that particular situation. It is rather unusual.

Q. I received the impression from your answer to a question on examination in chief that a branch manager, such as Mr. Osborn, or Mr. Adair or Mr. MacNeil, had imposed on [fol. 421] him by his company the obligation to see that premiums are collected. Is that generally true of branch managers or aren't they simply underwriters and acquisition instrumentalities just like commission agents in a great many cases?

A. Under a branch office set-up there is usually an underwriting department and a cashier's department and a claim department and an inspection department, and so forth, and the branch manager is the head of all of them or the overseer. Therefore the cashier's department is as much a part and parcel of his job as the production.

Q. But that cashier reports to the financial officer at the home office of the company rather than to the branch manager, doesn't he?

A. Some companies, I imagine, would have different situations in that respect than others.

Q. You don't mean then to leave the impression definitely that a man like these three plaintiffs I mentioned has responsibilities for collections?

A. He has no permanent responsibility. They don't have to put up the money in the event if is not collected, I don't think, but I imagine they have the responsibility of seeing that their cashier's department functions.

Q. At least that was so of you, was it, when you were a branch manager?

A. Yes.

Q. It has been suggested that you are talking about collections from the agents and not from assureds. Which are you talking about?

[fol. 422] A. I am talking about collections from agents.

Q. I was under the impression you were talking about the branch manager being responsible for making collections from assureds.

A. No.

Q. You didn't mean that?

A. I didn't mean that.

Q. Isn't it a fact that a good many general agents report directly to the home office even in towns where the company has a branch office? I am speaking now about people getting

general agents' commissions instead of producer's commissions.

A. That is true in some instances. I believe it is true here in Richmond. I know it was true of the National Surety in Los Angeles. They had a branch office in the city and they had a general agency that reported direct. The general agency had the territory. But those are just situations that time has developed.

Q. Having reference to the thirty-four companies that are plaintiffs in this suit, much less than half of them have branch offices in Virginia, don't they?

A. I don't know how many branch offices there are in Virginia but it seems to me it wouldn't be half of thirty-four.

Q. It would not be half of thirty-four?

A. No. It is only ten or twelve, isn't it?

Q. What bearing has this service got on a man in the casualty and surety business being allowed to write the renewal contract when the existing contract expires, if you [fol. 423] don't service a risk like that? Does it affect your capacity to write the renewal contract?

A. You would, I believe, stand a very good chance of losing it if you just merely let it go to the dogs or roll in the doldrums. That would be expected.

Q. Is the obligation to service a contract considered to have such a value that if you were going out of the insurance business you would feel justified in paying some other agent to service your contracts that you had on your books?

A. You mean if I were to retire from the business?

Q. Yes, would you feel that you had to go around and dig up a competent man to service your contracts and pay him something for agreeing to do it?

Q. Generally in the retirement of an agency, if that agency is retiring voluntarily or through death and not through failure or inadequacy of finances, the business would be worth something. The expirations could be sold to some other agency.

Q. Suppose you sold the expirations to some other agency and did not sell the servicing to that agency?

A. I think that you would find almost every sales agreement of any agency being bought or sold would have the servicing of the existing business a part of the agreement.

Q. Is it customary to give a man your expiration records and some money when you transfer a business to him under those circumstances or is it customary to give him the serv-

ice obligation and the expirations and for him to give the seller some money?

A. Your last statement is, I think, more or less true, that [fol. 424] if you have anything to sell you receive the money.

Q. In other words, he gives the old agent money and also assumes the service obligation?

A. That is right. That is all figured in as a general thing. There are a hundred different deals that can be made.

Q. Usually it is that way rather than having to pay somebody to take over the expirations and the servicing?

A. I would say so.

Mr. Christian: I don't waive my objections to the materiality of questions about the fire business, but in advance of a ruling by the Court on its materiality, I will ask some questions without waiving my objections. I still contend everything about the fire business that is in this record is utterly immaterial.

Q. Are you acquainted with the regulations and agreements among themselves of the members of the local fire boards around Virginia?

A. Well, our agency is a member of the local fire board here.

Q. You don't know why that custom exists then about the ten percent that you said you were informed of in 1932 when that company asked you to be its agent?

A. No, I don't know why. I have a very good idea.

Q. What is your idea on the subject?

A. I imagine it is an established custom.

Q. You imagine it is established by these local board rules and regulations too, don't you?

[fol. 425] A. No, because at the time that I took on fire companies I did not belong to the local board. I went in the insurance business as an agent and I don't think we joined the board until Curtis came with the agency in 1935, so there was no obligation of any company we represented to pay us any overriding commission or any countersignature commission on account of board membership because we weren't members of the local board.

Q. Did you represent a non-board company?

A. No.

Q. What companies did you represent?

A. The first fire companies that we took into the office

were the National Union, Duquesne Department and the Safeguard.

Q. Do you know whether those companies are members of the Southeastern Conference or were they members of the Southeastern Conference?

A. They were.

Q. Do you have some rather large lines of surety business that you place for Virginia corporations and which cover employees outside of Virginia?

A. Yes, sir.

Q. Do you find that you are able to give those obligees or assureds adequate service?

A. Yes, we think so and they seem to be satisfied. Most of the business is fidelity business and the investigation is taken care of. In the event of claims the companies' claim offices, scattered in other states, will handle those claims under our guidance.

[fol. 426] Q. Is there any immorality on the part of the National Surety Company or on the part of these assureds to whom I have reference in placing all of that business with you instead of scattering it around through Illinois, Michigan, Louisiana, and various other places that it covers?

A. No, sir, I don't think so.

Q. Are you aware that any interests of those obligees or assureds suffer by virtue of placing that business with Boswell & Curtis instead of scattering it around over the states?

A. Quite the contrary. That business, a great deal of it, would be unprofitable if divided. It would have to be written as a large single premium rather than scattered with many companies. The loss ratio in Louisiana might be 2000 percent, whereas in North Carolina it might be nothing. You have to look at the picture from the income and outgo.

Q. The company then would suffer a good deal if it had to break that up into numerous contracts in those different localities and would have a separate premium computation for each contract?

A. I believe that the premium computation for each locality is established and, if not, it is easily available. I was looking at it from an underwriting standpoint, having it combined in one company rather than having it in a number of different companies.

Q. Do you think that the business with you is transacted with greater or less facility than if it were transacted with various agents all over that territory?

A. I do not think that the business suffers by being placed in one agency.

[fol. 427] Q. You, however, would be hurt and these various local agents would be helped or, at least, there would be a tendency to help them if it were not placed in one agency; is not that correct?

A. We would be hurt naturally, yes.

Q. And these various local agencies would be helped or, at least, there would be a tendency to help the local agencies, wouldn't there, if it were taken away from you?

A. That is true, but if the reverse were true on other national schedules it would tend to temper the wind.

Q. You have testified today as to the commission agent acting as a buffer between the company and the assured and maintaining a sufficient force to service a contract he has written and visiting the customers in attempting to improve their loss ratios, pointing out unusual hazards, confering with them as to the reasons why they don't follow the recommendations of the company's engineer which they have not followed, seeing that they get the full benefit of the engineering service provided by the company, and so forth. Have you been speaking about business which you were the producer of only or of other business?

A. Business that I was the producer of only.

Q. Where you speak about the obligations that you feel rest on yourself, is that because of your capacity as a producing agent?

A. Primarily.

Q. You would feel that the same obligation rested on you or, at least, to a considerable extent, you would feel that it did, I suppose, if the business had been brokered with you and you had gotten a general agent's overriding commission [fol. 428] on top of the commission that was paid to Davenport or to Claiborne & Goddin, wouldn't you?

A. Yes, sir.

Redirect examination.

Q. Mr. Christian has asked you about the obligation that you would feel with reference to contracts that you were associated with which originated in Virginia. I will ask you this question with reference to contracts which originate

through negotiations conducted exclusively outside of Virginia and will ask you whether or not in that connection you have seen or are familiar with a resolution, a copy of which has been introduced in evidence, as Defendants' Exhibit A, part of a bulletin issued by the Virginia Association of Insurance Agents, a copy of which I hand you?

A. Yes, sir, I am familiar with that.

Q. I will ask you whether or not you would feel, in connection with a contract of that kind, such as is referred to in that resolution, that you, as a commission agent of Virginia, the same obligations with respect to same as is expressed in that resolution?

A. We would feel under the resolution that on account of the fact that we were associated we had a very definite obligation.

Q. Do you think that the resolution correctly sets forth and expresses the obligation which you would feel toward the insurance carrier and the assured, as well as the broker who negotiates the contract with reference to such a contract as is negotiated exclusively outside of Virginia but covers a risk inside of Virginia?

[fol. 429] A. Yes, because with this resolution at hand our association has gone on record as to just what our duty is, where it lies and how it shall be carried out.

Q. Will you state whether or not it is your intention in the future to perform that duty as expressed in that resolution with respect to any such contract as you or your agency may be associated with?

A. Yes.

Q. Mr. Boswell, when you spoke of your office handling business which was brokered throughout the state, what did you mean by "brokered"—placed with you by agents of other companies or by persons who hold brokers licenses in Virginia?

A. We have no business placed with us by persons who hold brokers' licenses. We do have a considerable amount of either brokered or what might be called sub-agency business that gets into our office on account of our ability to handle those particular lines. This business comes from agents of other companies and agents of the companies that we represent.

Q. How many casualty and surety companies are there that you know of which have adopted the branch office system in Virginia?

A. Do you wish me to name them, to the best of my knowledge?

Q. Yes.

A. Travelers, Fidelity & Deposit, American Bonding, Fidelity & Casualty, The Aetna, the Glens Falls, National [fol. 430] Surety, New Amsterdam, Century (the Century hasn't a branch office as such but does have a man here), the Commercial Casualty, together with the Metropolitan, and I believe that is all of them or practically all of them.

Q. Do you know how many of those companies are in this suit?

A. I know that the National Surety and Fidelity & Deposit are not. I am not sure about the others.

Q. What system is used by the companies which do not have branch offices for supervising the work of their commission agents in the state?

A. They have some supervising office located away from the state, like, for instances, the Massachusetts Bonding supervises this territory through a branch office in Washington. The other companies, such as Maryland Casualty Company, have agents who report direct to the home office of the company.

Q. Is that what is known as the general agency system or what do you call that?

A. The general agency system is a type of misnomer in the casualty and surety business, due to the fact that the involvement of territory and the subsequent obligations make it unprofitable for a thoroughgoing general agency to operate on a small differential. General agents, as defined and as limited by the acquisition cost conference, are usually commission contracts that are given out for the volume of business rather than territorial supervision.

[fol. 431] Q. What type of company employee supervises the agents where there is no branch office?

A. As a general thing, the companies have contact men located at convenient points who periodically make trips, such as the Massachusetts Bonding, and the Hartford has a branch office in Baltimore.

Q. Do they have special agents in Virginia?

A. I think the Massachusetts Bonding has a resident special agent. I am not sure whether the Hartford has one or not.

Q. I mean what is the general custom where they do not have a branch office? Do they have special agents?

A. They usually have some contact with a salaried man who is there to plant the territory and look out for their interests for them. Those people, as a general rule, do not maintain offices. I think the special agent for the Massachusetts Bonding lives in Lexington.

Q. Do these men perform something like the same functions as the branch manager would perform, so far as the production end of the business is concerned?

A. That is it.

Mr. Christian: Again I say that I don't think the resolution passed by this voluntary association has any materiality to our case and will insist at the hearing that the resolution and everything about it should go out as immaterial, but in advance of any ruling in the matter I will ask a few questions in respect of the matters pertaining to [fol. 432] the resolution about which the witness has been asked by Mr. Staples to testify.

Recross-examination.

By Mr. Christian:

Q. Without waiving the objection, I ask you will it affect the feeling of obligation which you said you would feel as a Virginia countersigner of a contract, as mentioned in this resolution, covering in Virginia but produced exclusively outside of Virginia if no single one of the broker or the company or the assured wants you to concern yourself with doing these things which the resolution obligates you to do or wants you to do any of those things?

A. I will answer that question in this fashion: We belong to the Virginia Association of Insurance Agents and as long as they have a set of rules and we are counted among their membership, we want to do what we can to live up to those rules and if such a case presented itself where the broker and the assured and the company advised us to go in contravention to the rules of our Association, we would have to appeal to the Association for a ruling in that particular instance.

Q. Isn't it a fact that if the broker wants you to do all of this in connection with the risk, or the assured wants you to do it, they can get you to do it without the help of this law?

[fol. 433] A. This is a distinct clarification of our duty. It not only tells us, as countersigners, as to what we should

do but it also surrounds the broker with every bit of protection offered by the American agency system.

Q. It also obligates all the members of the Agents' Association to communicate with the customer of this non-resident producer, does it not?

A. Yes.

Q. And negotiate with that man in order to gain knowledge of all the pertinent facts relating to the contract?

A. It does.

Q. Isn't that a decided departure from what has hitherto been considered to be the ethics of the business between agents?

A. In a way it is.

Q. Couldn't you remove that qualification "in a way" and just say that it is flatly in violation of all previous declarations of ethics by agents for you to be instructed by this local Virginia association to put yourself in contact with an assured who is somebody else's customer and not yours, and scrutinize his insurance transactions without the knowledge or assent of that broker or agent who represents him from away from here?

A. My remark was qualified, as almost all worthwhile brokerage is, as a general thing, a meeting of the minds of the countersigning or resident agent and the out-of-state agent. I would say in nine cases out of ten there would be some connection between the two. There always has been in the business of my office.

[fol. 434] Q. You have never had any business in your office involving casualty and surety lines where you countersigned contracts produced by non-resident brokers and agents, have you? It has been limited to fire?

A. No, not altogether. The countersigning that we have done has been a type of joint solicitation, you might say.

Q. This countersigning will be willy-nilly and compulsory as far as the non-resident producer is concerned, will it not, and will not be a type of joint negotiation or representation?

A. I don't know what you mean by willy-nilly.

Q. I mean this is imposed on this non-resident producer whether he likes it or not by this resolution, isn't it?

A. Under this resolution he should carry out what the resolution says do.

Q. Is there anything in the resolution to indicate that if the non-resident broker or agent who truly produced the

business does not want you to do this that you will be excused from doing it, or won't you be in noncompliance with this resolution, even though the non-resident producer told you not to do this, if you failed to do it?

A. Yes, you would be in violation of the resolution if you didn't live up to it the best way you could.

Q. Then going back to my question, when you, pursuant to this resolution, and without the non-resident producer giving you permission to do it, contact the assured or his Virginia representative and familiarize yourself with all pertinent facts relating to the contract, aren't you violating [fol. 435] what has been hitherto understood to be the ethics of your business?

A. Not having had any large lines of that particular types, I can't answer that.

Q. You haven't had any transactions of countersigning involving casualty and surety contracts, you mean, don't you?

A. I haven't made any that I didn't associate myself with the picture with the exception of one or two bid bonds or some court case or something like that that we were requested to sign for some out-of-state man.

Q. If I am a Virginia representative of one of these assureds which has placed its casualty and surety lines in New York through a New York agent or broker, and you come to call on me and want to know what about all of this Virginia coverage. Is there any justification you can think of for intruding yourself into my business except that you are a member of a Virginia agents' association which has compelled you to do it? Can you point to any other good reason for your doing it—prying into my business with which I have invited you to have nothing to do?

A. You haven't invited me to have nothing to do with it until I get down there.

Q. No, I have not invited you to have anything to do with it.

A. Then it is up to me to sell you on the fact that the company you are doing business with is extending its service. Certainly there could be nothing that would detract (I am going to be conceited enough to put this in the record) from the service of a local firm.

[fol. 436] Q. There certainly would be if I didn't happen to have records here covering my loss experience or I didn't

have anybody here that was duly authorized to talk insurance with you?

A. If you had no one here to do that, there isn't anyone I can contact.

Q. So your justification would be then, if you were arguing the thing with me, that "at least I am not going to do you any harm or I don't think I am."

A. Well, let us leave it on the first premise and say at least I am not going to do you any harm.

Q. Suppose I say, "Has my agent in New York any knowledge that you are doing this or are you doing this by his request or at his suggestion?" And you are compelled to tell me, in answer to that, that he has no knowledge of it, that he doesn't know you and you don't know him, you don't know what opinion he possesses of you, good or bad. Would that shame you at all in coming to me?

A. I would do this: In the event of a countersignature I would acquaint the broker who sent the business, either direct or through the company, with the fact that under a resolution I was supposed to do certain things and I would send him a copy of that resolution and I would point out to him particularly Clause No. 2 which associated me with him and with the fact that I would protect that renewal on his books so far as we were concerned.

Q. Is it not often true, as testified heretofore in this case, that the general agent through whom these cont-acts [fol. 437] in question are written oftentimes will not disclose, even to the insurance carrier, who is the broker that has produced it because of the broker considering that his trade secret that his general agent is obligated to protect him in, and that the insured is his customer?

A. You mean by that that the carrier will not tell the countersigning agent who the broker of record is in New York or Chicago or Philadelphia?

Q. I mean isn't it true that the carrier often does not know who is the producer through whom the business came to its general agent and that the general agent won't tell the carrier who is its producer? Aren't you aware that is often so?

A. I don't agree with that.

Q. You think that every general agent will freely disclose its brokerage and other production sources to its company?

A. You are confusing production custom. I don't believe

that the general agents as such will do a great deal of brokerage business. That will be done by brokers direct with branch and services offices of the companies in the larger centers. It will not come through a general agent as such.

Q. You know it to be a fact that the brokers in New York frequently deal with what are called the Borough agents, don't you, instead of going to branch offices?

A. No, I don't know that. You make that statement. I won't disagree with you.

Q. You don't know whether it is so or not?

A. I won't disagree with the statement.

[fol. 438] Q. Is it true or false that these companies who do not have branch offices in Virginia have them in cities outside of Virginia which are larger than any Virginia city in a number of cases?

A. I think that it is true that some of the companies have branch offices in a removed city.

Q. In other words, there is no cleavage between the companies on a basis of only ten or twelve believing in the branch office system and the balance not believing in it but the cleavage is simply as to in how small a town you may economically, under all conditions, maintain a branch office?

A. I don't think that the size of the town has as much to do with it as production in the territory and the company is pushing itself forward in that particular locality.

Q. Except for that correction would my statement be true, that nearly all the companies have some branch offices in the United States somewhere?

A. They either have some branch offices or they have departments. For instance, the Firemen's Fund Indemnity.

Re-direct examination.

By Mr. Staples:

Q. Mr. Boswell, isn't it true that the number of special agents and the amount of that type of service provided by a casualty or surety company would be largely controlled by the volume of business done in Virginia by that particular company?

A. That is true. The more premium income a company has the more necessary it is generally for them to have [fol. 439] more managers or assistant managers or specials

to service it. On the other hand, in some instances a company may organize a state with a larger force than their volume would indicate to get started, particularly in the case of some new company.

Q. A company that just did a sporadic business in Virginia naturally wouldn't have the same service organization or same number of special agents protecting the interests of the company as another company which did a large volume of business in the state; isn't that true?

A. They should not.

Q. You spoke of the records that it was customary for a Virginia resident agent to make of contracts that come to him which are negotiated outside of the state. Are these records sufficiently comprehensive to provide information to the taxing authorities of the state in order to ascertain the proper amount of tax which should be imposed upon a company with reference to this Virginia coverage business originating in another state? In answering this question please do not answer yes or no, but state the records which it is customary to keep in the office of the resident Virginia agent which you think would have any bearing upon the question above asked and which would provide the information which you think the taxing authorities would require.

A. On contracts of fire insurance it is an invariable custom to keep a copy of the daily report in our account current file and to make the account current show the total premium, number of the policy and the commission permitted to us. We also make a card expiration of the policy [fol. 440] and enter the amount of commission in our accounts receivable column on our books.

Q. Are those records which are kept in your office in such condition that the taxing officials of the state, from an examination of same, may ascertain the total amount of premiums charged on business covering in Virginia but originating outside of the state, as well as the business which originates within the state? In other words, is there any distinction made in your records with reference to the source or origin of the production of the contract?

A. This information would be available, although it has not been kept separate, but our card record would show from whom the business originates.

Q. Do the records in your office reflect the total premiums

charged on policies written in your office or countersigned therein?

A. The daily reports will always show the total premium charged, which may be amended by endorsement and those endorsements would also be a part of that daily report.

Q. I will ask you whether, in your opinion, the ethical standards which would apply to a transaction where a broker voluntarily associates you with him in a Virginia coverage contract which he negotiates outside of the state would have any bearing or any substantial similarity to a case in which the law itself compels the association of the Virginia resident agent with a non-resident broker and where the association of a Virginia resident agent with the transaction is not voluntary but is involuntary and, as [fol. 441] has been developed from the evidence in this case, is sent against the wishes of the broker and not in accordance with his desires but pursuant to the provisions of the statute involved in this case?

A. In my opinion the resolutions of the state association would now impose upon me certain requirements that, so far as the so-called ethics of the business were concerned, were not as clearly defined and possibly not existent prior to that time.

Q. Do you think that the present conditions under the new 1938 Act are different from the conditions under which this so-called ethical custom arose or do you think they are the same?

A. With the supporting resolution they are essentially different.

Q. What do you conceive to be the status of the Virginia resident agent so far as ownership or part ownership of the business is concerned with reference to contracts which are referred to him pursuant to the mandatory requirements of the 1938 statute?

A. If the Act as construed associates the Virginia agent as definitely as it would seem, it is still not exactly clear in my mind as to the ownership of the expiration or if the Act vests the agent with such ownership it would, of course, be agreeable to the receiving agent to accept it.

Q. To what extent would you think that the ownership of the local agent, as distinguished from association with the non-resident broker, would apply or be effective?

[fol. 442] A. Having so little brokerage business, I could hardly reply to that until some actual case presented itself.

If the law succeeds in giving me a portion of any business that I get by right of representation of a certain company, it would certainly be my desire to see that the business remains with my agency and with my company.

Q. To what extent would you consider that the non-resident agent or broker would have an interest in the renewal of the business?

A. He would have the same right as I would and possibly more so as he would be closer to the source.

Q. Is it your idea then that there would be a joint ownership in the non-resident broker and the Virginia resident agent of this business, each to try to protect the interests of the other in the renewal?

A. Under the resolution of the State Association the agents of that Association are pledged to respect the ownership of the expirations and to render assistance to secure the renewal for the non-resident broker when requested.

Q. Do you understand that assistance is to be rendered regardless of whether the Virginia agent is to be continued in association or not?

A. If the Virginia agent were not to be associated on the renewal his assistance would not be required.

By Mr. Staples:

Q. You think then that that second clause of the resolu-[fol. 443] tion is predicated upon the assumption that the local agent would be continued to be associated with the broker, do you not?

A. I do.

Q. Answer the question whether or not your answers with reference to ethics between Virginia resident agents and the brokers were confined to fire insurance or whether they were intended to embrace casualty and surety contracts as well?

A. It is my belief that ethics are not confined to a line but confined to the business generally, regardless of what class of business is concerned.

Re-recross-examination.

By Mr. Christian:

Q. Will you state what are the annual premiums through Boswell & Curtis in fire lines?

A. I can approximate it.

Q. That is all I want.

A. I would say it is somewhere between nine and twelve thousand dollars—less than twelve thousand dollars, I know.

Q. Do you consider yourself an expert in fire insurance agency business, as well as in the casualty and surety, or in the latter only?

A. What do you mean by "expert"?

Q. I mean that you have expert knowledge as to the performance of the duties of an agent and the customs in the business?

A. Certainly, on account of experience, I am more qualified to answer about casualty and surety.

[fol. 444] Q. Do you have knowledge of whether it is the usual custom for the agents of casualty and surety companies to have written agency agreements with their companies?

A. Yes, sir.

Q. Which is the custom? Is it a custom to have written agency agreements or not to have them?

A. We have written agency agreements with all the companies we represent, the casualty and surety companies.

Q. Is that generally true, according to your experience, with other agents?

A. So far as I know.

Q. Has any state authority ever examined your records with the view of ascertaining the correctness of premium tax returns by either of your casualty or surety companies?

A. Not that I know of.

Q. Have you ever made any report to the tax authorities of the State of Virginia as an aid to them in assessing premium taxes against your companies?

A. Only as a matter of my own income tax in the partnership returns. That has nothing to do with a premium tax.

By Mr. Staples:

Q. Up to very recently there has never been any statute which, if complied with, would require or even indicate that the combined records of all the resident agents of Virginia would, in any way, reflect the true amount of premiums paid on business originating outside of Virginia, has there?

A. So far as I know, there was no requirement that the [fol. 445] holder of an agency license keep any record of his writings except with his company.

Q. Even if he did keep complete records of all the business coming through his office, the point I was trying to bring out is this, that business handled through non-resident agents and brokers, with which no resident Virginia commission agent was associated, would not appear on the books of any Virginia resident commission agent; is that correct?

A. Naturally, if the countersignature were not occasioned by a resident commission agent there would be no commission agent who would know anything about it.

Q. I believe you said you had been a branch manager of a casualty and surety company in Virginia during your past experience; is that true?

A. Yes, sir, I have.

Q. Did your office keep a record of the amount of premiums charged in policies that were countersigned by your office, originating outside of the state?

A. When I was branch manager of a surety company it became necessary, from time to time, to countersign bonds and policies and, so far as I can remember, no record was kept.

Q. Are you familiar with the general practice of branch offices in connection with keeping records of this type?

A. Methods of bookkeeping change from time to time. I suppose I am generally familiar but I am not familiar enough to give testimony in that particular direction.

[fol. 446] By Mr. Christian:

Q. Without waiving my objections, I will ask the witness whether, when he referred to furnishing countersignatures without keeping a record of the business countersigned, he had reference to business produced in his own territory or to business produced outside of his own territory?

A. My territory at that time was the State of Virginia and the business was evidently produced outside.

Q. Did you keep records of business produced in Virginia?

A. All of it by the agents reporting to my office.

Roger E. Clark, a witness called on behalf of the defendants and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. Clark, give your full name, age, residence and occupation, please?

A. Roger Evans Clark, Fredericksburg, Virginia; 40; I am in the general insurance business.

Q. How long have you been engaged in the insurance business, Mr. Clark?

A. Since 1927.

Q. With what types of insurance have you been connected?

A. All lines from life through fire, allied lines, and casualty.

Q. Have you been a commission agent or a salaried employee, or both? State your experience along these different lines?

A. I have been a commission agent while I have been in business.

[fol. 447] Q. You never have been a salaried employee of any insurance or casualty company?

A. Of no company, no. I was a salaried employee of a local agency for a few months but not a company.

Q. What companies do you now represent in your office?

A. The Aetna Fire, the Agricultural Insurance Company of Watertown, New York, a fire company, the Reliance Insurance Company of Philadelphia—all of these are fire companies until I indicate otherwise—the Home Insurance Company of New York, the National Liberty Insurance Company, the Sun Insurance Office of London, the Northern Assurance Company of London, Fidelity-Phoenix Fire Insurance Company of New York, and I don't know that I can quote them all offhand. The casualty company is the Century Indemnity Company of Hartford, Connecticut, and the Northwestern Mutual Life Insurance Company of Milwaukee.

Q. Is the casualty company you represent one of the plaintiffs in this suit?

A. Yes, sir.

Q. What has been the territory which has been covered by your office during this time?

A. Fredericksburg and vicinity and Virginia and, I will say, in the counties within forty miles.

Q. Are you a member of the Virginia Association of Insurance Agents, Inc.?

A. Yes, sir.

Q. Do you hold or have you ever in the past held any [fol. 448] office with that Association?

A. Yes, sir.

Q. Just state the situation with respect to that?

A. I have been a member of committees, Chairman of the various standing committees up until the year I was made President, and since then have served on the Executive Board, now known as the Board of Directors, which position I now occupy.

Q. When were you President of the Association?

A. The year 1936-1937. Our fiscal year doesn't end in January. It was a one year term.

Q. Has your past experience in this business and your service as an official, director and president of the Association, brought you into contact so that you would have reasonable familiarity with the general customs and practices of the business of a commission insurance agent?

A. Yes, sir.

Q. I wish you would state what has been the custom with reference to the division of commissions or rather the compensation of the Virginia resident commission agent with respect to fire insurance business during your experience as an insurance agent?

Mr. Staples: Counsel for the defendants agrees that it is understood and will be understood, throughout the taking of these depositions, that counsel for the plaintiffs object to all questions relating to the fire insurance company business and all customs incident thereto without the necessity for his repeating the objection.

[fol. 449] A. Commissions on fire business have been divided between the resident agent and the broker equally, in my experience.

Q. Do you have reference to business originating or negotiated entirely outside of the State of Virginia where the coverage has been within your territorial representation of any particular company writing the risk?

A. Yes.

Q. Has that practice of dividing the commissions in fire insurance risks negotiated by non-resident brokers outside of Virginia prevailed ever since you have been connected with the fire insurance business?

A. Yes, sir.

Q. Is there any local board of insurance agents in Fredericksburg and vicinity?

A. Yes, sir.

Q. How long has that board been there?

A. About four months.

Q. Was there any local board there prior to that time?

A. Not in my experience.

Q. Do you have any knowledge of the origin of the custom of division of commissions in the manner you have stated between non-resident brokers and Virginia resident agents in the fire insurance business?

A. No, sir, it was in effect when I went into the business.

Q. I wish you would state what is customary for a Virginia resident agent to do when a fire insurance contract, negotiated outside of the state, is sent to him by a non-resident broker or by the company that he represents which is writing the risk?

[fol. 450] A. When sent by a company he is given instructions as to things he will do and he conducts his investigation of this risk in the same manner as he would if he were the direct producing agent, and reports, after his examination of the risk, as to its desirability to the company and such things that he would recommend to the advantage of the customer or property owner. He then prepares the policy, submits the form through the constituted rating bureau having to do with the control of the rates and the form applied and transmits the completed document to the company. He then takes credit for his commission which is referred to in the transmittal letter in his company account current and holds himself in readiness to service that risk until the policy terminates.

Q. What is the relationship between the commission agent, the assured and the company with reference to the policies, either originating in Virginia or sent to the agent in the manner you have indicated?

A. The assured is given to understand that the agent is associated with the producing agent to render the type of service that the risk deserves and that insofar as the resident agent is concerned it does not in any way reduce his responsibility to the owner, nor does it increase the cost of the insurance to the owner of the property.

Q. What is his attitude to the company? What obligation does he feel he owes to the company?

A. To notify the company of a risk which, considering the hazard assumed, is undesirable and, in case cooperation is [fol. 451] not obtained, to make the risk desirable. He has

a divided interest between the company obligation and that which he owes to the property owner.

Q. Does he occupy a partial or an impartial relationship between the insured and the insurer?

A. His position is, if it can be when he has two interests, neutral. He has both interests at heart, the company and the client.

Q. What experience have you had with reference to the casualty and surety business? That is, when did your experience in that begin and what has been the extent of it?

A. We have casualty business in the office that has been there ever since I have been in the business. Its rapid growth has now placed it as the largest type of insurance in the office.

Q. Please state the classes of risks which are written by the casualty or surety company that you represent?

A. Compensation, automobile liability, personal accident and health, public liability, contractor's liability, plate glass, surety bonds, and it goes on down the list, Mr. Staples.

Q. What is the type of service which a resident Virginia agent renders in connection with a casualty or surety contract, beginning from the time of the negotiations between the agent and the assured? You may use any particular type of contract that you desire for illustration.

A. Take a compensation risk, a mandatory coverage. We have to secure a very detailed knowledge of the operations [fol. 452] to be covered. In preparing a contract we work with the assured as to the estimated amount of payrolls on which this type of insurance rate is promulgated. This gives the company some idea as to the premium income on the annual basis for the risk being assumed. With this knowledge they can treat certain hazards more intelligently as to whether they are acceptable to the company. In this preliminary survey of the risk we will find hazards that could be corrected and the resident agent, having the cooperation of the assured and knowledge of his operations, will endeavor to have him cooperate to put into effect the preventive measures, measures which, from his experience as an insurance man, will bring down the loss frequency and correspondingly reflect in the premium the assured will pay for his policy. He uses to the fullest extent the facilities of the engineering department of the company in this connection. The policies are properly put through and placed into effect, the resident agent, of course, being re-

sponsible for the collection of the premium. It is his duty then and he does service that risk until it terminates. When the loss frequency increases he continues to render the safety service and brings the risk in line. Accidents occur and it is that agent's duty to see that the proper forms are properly completed and complete, firsthand information is submitted to support the claim, and he follows it through to its final payment, at all times having at interest the two parties to whom he is responsible, the company and his client. The automobile risk can vary with the treatment you [fol. 453] give a single car to a large fleet. The single car owner you may think would not require much service. If he does need it you are the one person to whom he looks for that personal service to see that the entire conditions of the policy contract are fulfilled. On large risks he goes through a service, giving effort similar to compensation. Most of these things come up from a claim developed because then he will find situations in which the assured has been placed that proper preventive measures could have prevented. It is his duty to advise with his assured to possibly dispense with the services of some of his personnel, at all times giving him the information which he has secured as a result of this accident. In the public liability lines you make an inspection of the premises before you assume the hazard for the company and, working in cooperation with the engineering department of the company, you try to have eliminated all hazards that are visible. The resident agent works with the assured to see that these recommendations are complied with. This has its dual purpose—improves the loss ratio of the company and benefits the assured who does not want the accident to happen. I believe you could go on through each type of insurance.

Q. Is what you have said somewhat typical of the various types of coverage which the company you represent covers?

A. Yes, sir.

Q. Does your company provide an engineering staff in Virginia?

A. Not full time. It is a service which is subject to call and periodically an engineer visits the state, my risks in [fol. 454] particular, and makes a cooperative survey with me as the agent.

Q. Does the company hold this service available for you at any time that you request it?

A. Yes, sir.

Q. Is the service usually rendered at your request or at the request of the assured?

A. I don't recall any assured having asked for it. It has been at my suggestion in each instance.

Q. Have you had any experience with the State Corporation Commission in connection with rate-making or classification or anything of that kind?

A. Directly with the Corporation Commission, no. The Virginia Auto Administrative Bureau and the Virginia Insurance Rating Bureau are as far as I have ever found it necessary to go. They are, I presume, under the control of the Corporation Commission and that is as far as I have ever had to take any matters.

Q. Give an illustration of your contact with those bodies?

A. If I may cite a fire risk, we made a survey which brought us into one of those bodies, the Virginia Insurance Rating Bureau. We found conditions in the risk which had to be passed upon by that rating organization. That is usually done with a plat drawn of the risk showing exposures and types of construction and properly equipped with a broker's letter of authority from the owner, we can then sit down with them and devise the rate on the risk as it now stands and with possibilities of change to the advantage of the owner. Automobile-fleet-wise our contact [fol. 455] would be to describe the particular operation of the assured to see that the various classifications of long and short haul were met by him and sometimes a conference clarifies in the agent's mind and the truck operator's mind the proper classification so that he will know he is paying the just premium. Those conferences get rid of the differences and both understand what should happen. Under compensation insurance I have had no technical points which required the administrative bureau to get into the picture to any large extent.

Q. Do you have any service to perform in connection with the preparation of proofs of claim in any casualty or surety cases or is that largely confined to fire cases?

A. No, sir, I follow the casualty claims one hundred per cent from the minute of the accident until the claim is settled, more so than in the case with a fire claim.

Q. What do you do when you follow the claim?

A. I investigate the accidents of our clients. We avail ourselves of every opportunity immediately to gain information helpful in preparing the proper defense should a claim

result. We constantly consult with our assured to see that he does not do things which might prejudice him. It is possibly the first one he has ever had and he looks to one with a few more claims experience than he has had to guide him. We stay right with him and when it becomes a legal question it is turned over to our attorney for further handling in court, and when the claim is adjudicated, in our particular case, I issue a draft on the company's bank in payment of the claim and take the proper releases.

[fol. 456] Q. What is the compensation which you receive for all of this service which you have just described?

A. We receive a commission differing with the various types of business which we sell. There is a scale of commissions made on each contract as to what you will receive on personal accident business, which is in excess of what you will get on automobile risks, and still less commission on your compensation premiums. It is all based on a percentage of premium on that particular risk set out in the contract between the agent and the company.

Q. Does the contract between you and the company provide for rendering by you of this type of service which you have spoken of which you render to the assured?

A. No, sir, it does not give it in detail. The usual contract—I cannot quote the words—obligates us to render service to the assured and that is my construction of the service.

Q. Suppose there is a case of controversy between the assured and the insurance carrier, what position does the Virginia resident commission agent occupy in a case of that kind?

A. With the purchase of an insurance policy he is my client. It is my job to see that he gets what his contract calls for.

Q. Do you intend by your answer to state that that is your individual idea of the relationship between a resident Virginia commission agent and the assured and the company or is it the customary relationship occupied by such agents generally throughout the state, so far as your experience has been able to inform you?

[fol. 457] A. That is customary.

Q. Is the resident Virginia agent generally available to the assured for consultation and advice with respect to interpretation of the contract and the assured's duties thereunder or any other matters relating to the coverage?

A. Yes, sir, the agent issues the contract and advises the assured as to his requirements and obligations.

Q. To what extent has your business consisted of Virginia coverage contracts in the casualty and surety lines which have been negotiated outside of Virginia, covering risks in Virginia?

A. Prior to 1936 no experience whatsoever. Since that time I have had a limited number of small casualty coverages, none of which have been located in my own community. Very few of these contracts have remained in force. They have been of such small size as not to induce the agent to travel the distance to make a contact with the assured to be in position to help maintain the policy in force. I would say my experience is very limited on a non-resident casualty policy.

Q. Were you present at the meeting held on February 13, at which a resolution was adopted upon the subject of the general duties and functions of Virginia resident commission agents in relation to Virginia coverage contracts negotiated outside of the state?

A. Yes, sir.

Q. I hand you a copy of that resolution and ask whether or not, in your opinion, the resident Virginia commission agent will, in the future, comply with the general duties and [fol. 458] functions of such agent in connection with non-resident business of this type with which such local resident agent may be associated hereafter?

A. Yes, I believe he will.

Q. Is it your intention to comply with the provisions of that resolution as to any business which may be sent to you or your office by the casualty and surety company which you represent?

A. Yes.

Q. I wish you would please state whether or not, in your opinion, a non-resident broker or a non-resident agent is in a position to render satisfactory service to an assured or to the insurance carrier in connection with local risks in Virginia unless such non-resident agent or broker makes a personal visit to the state and fairly familiarizes himself with the conditions pertaining to the risk?

A. My answer would be no. If you want an illustration, I can give it.

Q. I wish you would state your reasons on which you base your answer to this question, Mr. Clark?

A. In the event I were the originating agent on a piece of business located in another state, far removed from me, I would not be in a position to give that risk the attention which the assured is entitled to receive that far removed from it. I would say the same would be true on a risk in Virginia controlled by a non-resident broker far removed from the scene of the risk.

Q. How about the interest of the carrier which does not maintain an efficient branch office with a large, competent, force of salaried representatives?

[fol. 459] A. If no such branch office were maintained, it would be increasingly important that a resident agent be associated on the risk.

Q. You mean from the standpoint of the insurance carrier?

A. Yes, I would say that.

Q. You spoke this morning of the service which you would be accustomed to render and also, in your opinion, other Virginia agents would render in connection with several types of coverage. I believe you spoke of automobile fleet liability policies and workmen's compensation policies. I wish you would use those same types of coverage to illustrate the position which will be occupied by a non-resident agent or broker in relation to a proposed risk of either type and also in relation to the service to be rendered during the life of the risk.

A. The assured loses the contact of the interested associated agent on the risk during the term of the policy. The non-resident broker is not available instantly when service on the risk is needed and at removed locations immediate company facilities are not always available. Hence the insured is entitled to that resident agent service which would be available to him when he is associated on the risk.

Q. Do you believe that the need to the assured of the services of a resident commission agent is greater or less in cases where the insurance carrier does not provide an extensive local engineering or other service organization?

A. The resident agent service in removed locations would be just as essential in either case. My personal experience [fol. 460] would not carry me into cities where active so-called service offices are functioning. I speak of removed locations because that is my major experience and in those cases the resident agent is valuable to the assured. Also, being closer to the risk, he is of considerable value to the carrier.

Q. Do you think it is important to the rendition of proper service for an agent to be personally familiar with the facts and circumstances attending the risk involved?

A. Yes, sir.

Q. What records does your office keep with reference to the total amount of premiums charged on policies passing through your office?

A. We keep an annual record of the business written by classes. It is kept monthly but tabulated annually by premium volume.

Q. Would your records disclose whether the premium charge originated from negotiations inside this state or whether the same resulted from outside of the state negotiations?

A. The records would disclose that condition.

Q. Then is it or not true that if the Insurance Department or its officials should desire information for taxing purposes of the amount of premiums involved in business written through your office, this information could be obtained through your office?

A. Yes, sir.

Cross examination.

By Mr. Christian:

Q. Mr. Clark, are you, under your contract with your [fol. 461] company, which I believe you said is called the Century Indemnity Company, a general agent of that company or local agent?

A. General agent.

Q. How many sub-agents work under you?

A. At the present moment, none.

Q. If you left off the words "At the present moment," what would be your answer?

A. There have been.

Q. How many?

A. One.

Q. Where did he maintain his office?

A. In my office.

Q. Does your company maintain a salaried claim department in Virginia?

A. I wouldn't know how they were compensated but they have claim offices in Virginia, two in Richmond and Washington, D. C., which is just as close to me, and in other

various sections of the state. How they are paid, I am not qualified to state.

Q. Does this claim department investigate accidents in your territory?

A. Should I request it, yes, sir, but that has not been necessary in the handling of my business recently.

Q. It has not been necessary?

A. Recently.

Q. You mean you don't have any accidents up there or just what do you mean?

A. We attend to them ourselves and report direct to the home office claim department.

[fol. 462] Q. Do you receive any special compensation when you go out and investigate and report on an accident?

A. Yes.

Q. At what rate of compensation and by what method?

A. Percentage of premium volume controls that.

Q. Do you get a larger compensation if you investigate that accident than you would if you didn't investigate it?

A. As a local agent we do the investigating. I may not understand what "investigating" means. An agent would investigate a claim in looking after his client's interest but in the final adjustment of it I am paid a certain percentage of premium volume for seeing it through to its definite settlement.

Q. Do you know what the general agent's commission is on automobile business in Virginia?

A. Twenty percent.

Q. Under this contract of yours what do you get for handling automobile business?

A. Twenty percent.

Q. And you never, under any circumstances, get any more than that under this provision about premium volume that you spoke of?

A. That would not be included in your commission contract.

Q. Have you got some other contract?

A. It is by adjustment agreement to cover the expense if I go further in handling this matter for the company.

Q. Am I correct then in my assumption that you have two contracts with your company, one your agency agreement [fol. 463] and the other your agreement as an adjuster?

A. I have never termed it as an adjuster, no, sir.

Q. What do you call that agreement?

A. I call it reimbursement for extra expense involved.

Q. Because you are doing this claim work?

A. Yes, telephone charges and things that go in to make up transportation in adjusting.

Q. Clerical work too?

A. Clerical detail. I doubt if it pays for the time.

Q. So in addition to the maximum general agent's commission scale, you do receive some other compensation from your company as a result of these activities in connection with claims?

A. To defray the expense of it to that extent, yes.

Q. Do you have a separate letter agreement covering your inspection services?

A. No, sir.

Q. Under which contract do you do that?

A. My production contract.

Q. Does the company maintain any engineering department in the state?

A. No, sir. As testified this morning, a man is available, not living in the state, subject to call by my office.

Q. Why is it that you prefer to make those inspections instead of calling on him to do it?

A. Because it is immediate, because it is an additional service to the client.

Q. What is the annual premium income of the Century [fol. 464] Indemnity Company in Virginia?

A. I do not have the figures but approximately about $180,000.

Q. How much of that is through your agency?

A. Approximately $35,000.

Q. These inspections that you want to be immediate and, therefore, perform yourself, are always inspections after the contract, in connection with which the inspection is made, has taken effect or are they inspections as an incident to putting the contract into effect?

A. They are both. They are incident to putting it in effect and to continue so long as he remains a client of my office.

Q. And what are the occasions, after the contract has become in effect, when you need an inspection so quickly that you can't wait for the salaried engineer to make it?

A. His attention is not constant. Mine can be and is.

Q. I mean what is it that you are inspecting that you must inspect so immediately?

A. Upon the occurrence of an accident, as defined this morning, certain facts are revealed as to the physical condition of equipment or the human element involved in the assured's risk.

Q. Do you make a report of that inspection?

A. To my insured immediately.

Q. I mean do you make a report to the company?

A. No, sir, not unless the assured fails to correct it.

Q. Do you do the claim adjusting in connection with that accident too?

[fol. 465] A. Yes, sir.

Q. Don't you have to report to the company how the accident took place as a part of the claim adjustment?

A. That is right, sir.

Q. I must have misunderstood you when I understood you to say that you did not make a report to the company of the results of the inspection?

A. Unless the assured fails to comply. There are suggested changes or recommendations I might make to him to improve the risk.

Q. But you have to make a report to the company if an accident has occurred, don't you?

A. Yes, sir, a complete detailed report is made.

Q. Doesn't that report include what you found out as to the cause of the accident when you made your inspection?

A. Yes, sir.

Q. Then you do report to the company the results of your inspection, don't you?

A. Under the claim report, not under the inspection report. You are dividing the two, are you not?

Q. No, I am trying to find out when there is an accident and you make a report, you report the results of the inspection to the company as a part of your claim report?

A. Usually it is with the statement to the company that the defects found that caused this have been agreed to be corrected by the assured. I don't recall having to send one in that was not the final report along with the claim.

[fol. 466] Q. But the fact is in actual practice that you do report it to the company as a part of your claim report?

A. That would be true.

Q. Why is it that you consider that is a part of your production work and not a part of your claim adjustment work for which you are specially compensated?

A. When the claim settlement ends, recommendations for further improvement of the risk would not be claim service. That would be service to the assured to which he is entitled, I being his resident agent on the risk.

Q. You claim then as a part of your service to your assured that after an accident has taken place and you discharge your duty as claim adjuster for the company and have paid whatever has to be paid because of the accident, you then sit down and write to the assured and tell him he had better change this, that, or the other so as not to have a similar accident in the future and that you are doing that as a part of your service to the assured and you are not doing that for the company?

A. That is right, sir.

Q. And that is the way in which you get the good will of the assured and cause a tendency toward a lower loss experience on his risk; is that right?

A. That would react to his favor, yes, sir.

Q. And you would hope by doing that that he would give you the renewals of his business and also some additional insurance business as a result of your helping him that way; is that right?

A. Continue his good will, yes, sir, that we already maintain.

[fol. 467] Q. What would be the effect if you didn't make that suggestion to him? Would you be liable to him in a damage suit?

Q. I understood you to say you owed him that duty; is that correct?

A. That is what I consider that I owe him—all the service I can possibly give him.

Q. And if you didn't make that report you would consider he would have a right to sue you?

A. I don't think you have a right to put me in that position. There is nothing in the contract, written or verbal, that requires that I do it. My construction of the service to my assured is my construction.

Q. You do it as a voluntary matter then and as a part of serving him to advance your relationship with him?

A. Not only does it advance my situation with him but also of the company which I represent.

Q. It is for the general good of your business, the company's business and the assured's business; is that right?

A. Absolutely.

Q. And you think it is a voluntary thing that makes you a success or a failure, whether you do it or don't do it; is that right?

A. On that service I hinge the growth of my business, yes.

Q. And it is for you to say how much, by means of such service, you will encourage that growth or discourage it?

A. It has a great deal to do with maintaining the growth. An agent who does not do it is easy to compete with.

Q. Mr. Clark, having reference only to casualty and [fol. 468] surety business, what business of that sort do you produce that covers other than in Fredericksburg and its vicinity?

A. It is limited but I have had some involving contractors.

Q. And at other points in Virginia than Fredericksburg?

A. I thought you said outside of Virginia?

Q. In or out of Virginia. Where have they been? In or out of Virginia.

A. We will take, for example, Louisiana. A contractor in my town secured a contract is Louisiana.

Q. When was that?

A. The latter part of 1937, speaking of that particular case.

Q. What sort of contract was it?

A. Compensation and contractor's liability.

Q. Did you have a Louisiana agent associated with you in that production?

A. Yes, sir, I knew of no Louisiana agent by name. The man would be there some months handling this contract and I was too far removed to render any service to him on the job. So I submitted it to the company for a recommendation as to someone with whom I could associate my office and service the risk while it was there.

Q. And you divided the commission?

A. Yes, sir. I don't know whether we divided it equally or what the percentage was but a separate policy had to be written. I could not extend his Virginia coverage by endorsement. A separate contract for that particular contract had to be executed by the Louisiana agent and my assured informed me that my letter to the resident agent

[fol. 469]brought forth the proper forms for that state and explanation as to how they should be completed and he followed the whole risk during the seven or eight months that it was there.

Q. Do you know whether the Century Indemnity Company has a claim service department and an engineering service department with permanent headquarters in Louisiana?

A. I do not know myself. I do know that the assured stated to me that his claims were given excellent attention and properly looked after and, also, before any claim occurred, when he first arrived on the job, he was contacted by a representative there and told how to proceed and that he would guide him through the whole operation.

Q. Who contacted him?

A. I understood the resident agent who wrote the policy for me through the company.

Q. You don't know whether it was the claim man or the engineer or the agent?

A. I wouldn't be in a position to say. More than one person did contact the assured.

Q. On what other occasions have you produced casualty business that covered outside of the Fredericksburg vicinity?

A. You would think close to Washington that I would have some but I have transferred policies on Fredericksburg residents who have moved to the District of Columbia. I have transferred those by endorsement on the policy then in effect but, upon termination, they were advised to place it with a local agent and name our company and I did not share in the commission. That agent is entitled, I thought, [fol. 470] to the commission since he was servicing the risk.

Q. Why was it necessary to make any endorsement on the policy?

A. Premium change due to different location.

Q. Was that business in Louisiana placed with the Century Indemnity Company?

A. Yes, sir.

Q. About these people that move from Fredericksburg to Washington—were they single car automobile risks?

A. That is right.

Q. There was no remaining Virginia coverage under those risks after they were moved to Washington?

A. The policy does not restrict its coverage to any state. It operates where the car may be in an accident. The place of residence of the assured is shown in the contract. When that is changed it may increase or decrease the hazard and an endorsement effects the change and shows where the car is principally used which is information the company should have and they are entitled to the premium or the assured is entitled to the refund, whichever the case may be.

Q. Do you happen to know who places Ben Pitt's casualty insurance on his theatres around the state of Virginia?

A. In its entirety I wouldn't know.

Q. Do you have any of that line?

A. A small amount. I understand, if you want this in [fol. 471] the record, that doing business in various localities, it is his choice that agents in those localities be favored with the business direct and, therefore, I am not the broker of record on various risks. He places it in Leesburg, for example, with the Leesburg agent, in Newport News with the Newport News agent, and so on.

Q. Did Ben do that before the 1938 Act became effective or was he only enabled to do that by this Act?

A. His actions today are the same as they were, to my knowledge, prior to '36 or '38 or any other time.

Q. In the Louisiana case did your contractor tell you that he wanted you to split those commissions with a Louisiana agent so he could have a local contact?

A. No, sir, it was my suggestion to him.

Q. Was it Government business, State business, municipal or parish business or was it a contract for somebody else?

A. I couldn't give you an affirmative answer but I think it was public work.

Q. Don't you know that in most states you can't do public work without associating a local agency in the bond coverage?

A. I would not know, but a risk of that type we submit to our company which has an agency department and is in a position to know what the rules are and the laws in various states. That advice is sought and their answer is final, so far as I am concerned.

Q. Did they tell you in this case you had better get this Louisiana agent?

[fol. 472] A. No, sir.

Q. Leaving out the Louisiana case and leaving out the case of these people with single car automobile coverage who moved from Fredericksburg to Washington, have you been the producer of any business you can recall that covers outside of the Fredericksburg vicinity?

A. So far as out-of-state business is concerned, definitely no.

Q. How about in other sections of the state outside of Spotsylvania County, for instance?

A. Well, I have accepted brokerage in my office from agents as close to me as Arlington County. That is fire business. I have brokered two agents in Alexandria, as close to me as that on fire business within the state. They are resident agents the same as I am and a division of commissions is made on a fifty-fifty basis.

Q. That is where you produce the business and broker it to them?

A. Yes.

Q. Do you have a Sanborn map with the Alexandria risks on it in your Fredericksburg office?

A. I do not.

Q. Do you have a rate book in your office that shows the rates on Alexandria fire risks?

A. I do not.

Q. Have you ever handled or had any personal contact with the servicing of a schedule fidelity bond with coverage in more than one state?

[fol. 473] A. No, sir.

Q. Or with an automobile policy with coverage in several states?

A. No, sir. My only fleet experience has been risks located in Virginia that did go as far as the District of Columbia and back to the location in Virginia.

Q. Where would be the place where the garage for the cars is located?

A. In Virginia.

Q. At Fredericksburg?

A. Yes, sir.

Q. Have you ever had any experience in theatre chain public liability or merchandise stores public liability?

A. Merchandise stores, no; theatre chains or any large chains, no.

Q. Have you ever had any experience in servicing multiple location plate glass policies?

A. No, sir.

Q. Have you ever had any experience in servicing multiple location compensation policies?

A. The furtherest that goes is a contract that might have three or four jobs under way at the same time.

Q. Around Fredericksburg?

A. Well, in the state—not necessarily confined within fifteen miles of Fredericksburg. It might be at Leesburg; it might be at Williamsburg.

[fol. 474] Q. Have you customarily brokered that business for the locations that were not in Fredericksburg?

A. I have never had one of sufficient size to go into any connection there, I being the best point of service for the Century on those particular risks. I say that for the reason that the personnel of the man's organization is regularly domiciled in Fredericksburg and would return there for the settlement of a claim from the accident.

Q. Did you furnish accident service on those risks under your letter agreement?

A. Yes, sir, I adjusted every claim, went to the risk and inspected its hazard, and visited it myself personally frequently.

Q. Do you know how many resident agents in Virginia hold Century Indemnity Company licenses?

A. I know there are in excess of three or four and, my opinion would be, in excess of thirty or forty. How much in excess I am not in position to say.

Q. What is the population of Fredericksburg?

A. Around 8400 in the corporation limits.

Oscar H. West, a witness called on behalf of the defendants and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. West, I wish you would state your full name, age, residence and occupation?

A. Oscar H. West; 44; residence, Richmond; Manager of the Virginia Association of Insurance Agents, Incorporated.

[fol. 475] Q. Do your duties as manager require you to

keep a record of the minutes of the meetings of the Board of Directors?

A. Yes, sir, they do.

Q. I hand you herewith what purports to be a copy of the resolution passed by the Board of Directors of the Virginia Association of Insurance Agents, Incorporated, February 13, 1939, the correctness of which appears to have been certified by you as Manager and will ask you to state whether or not you have compared that resolution with the resolution as it appears on your minute book and whether the same is correct?

A. Yes, sir, I have and it is.

A. Yes, sir, it was passed unanimously and is so recorded in the minutes of that meeting.

Q. I will ask you to file this copy of that resolution and mark it Defendants' Exhibit B.

Mr. Christian: The resolution offered as Exhibit B is objected to for all of the reasons for which the defendants' Exhibit A was objected to except the reason assigned as one objection to Exhibit A that it was a mere purported copy of a purported copy.

(The copy of the resolution was filed and marked Defendants' Exhibit B.)

Q. Mr. West, I hand you Defendants' Exhibit A which was filed yesterday with the testimony of Mr. DeJarnette. This exhibit purports to be a bulletin issued under your signature as manager of the Virginia Association of Insurance Agents, Incorporated, issued February 17, 1939. I will ask [fol. 476] you to state whether or not a copy of that bulletin has been mailed to various insurance agents of the State who are members of your Association?

A. Yes, sir, it has.

Q. How many members are there of your Association?

A. 320 today, I think. The membership is by agencies, not individuals. There are 320 member agencies.

Q. Do you know the number of individuals represented by that?

A. An average of five per agency as established by a national poll on that a couple of years ago.

Q. Has the Board of Directors of this Association in the past adopted resolutions relating to the policies and practices of the business of the membership?

A. Yes, sir.

Mr. Christian: I insist on my objections to the resolutions and the bulletin and the Constitution and other evidence respecting this Agents' Association. Without waiving that objection but intending to insist upon it, and to have any benefit from my own questions, if the objection should be overruled, I now ask the following questions:

Cross examination.

By Mr. Christian:

Q. I notice here on page 17 of the proceedings of the Fortieth Annual Convention, held June 24 and June 25, [fol. 477] 1938, a report of the President of your Association, J. Davis Ewell, and I want to read an abstract from that report and ask you to say whether I read it correctly.

Q. I will ask you if I am correctly reading from the report of the President on page 17 as follows: "Past President Hancock made the statement that in 1936 we for the first time in the history of the Association succeeded in passing some aggressive legislation designed to help agents. During the past year under the able leadership of Chairman Edmund T. DeJarnette, we again took the offensive and secured passage of House Bill No. 151. The enactment and enforcement of this bill should mean thousands of dollars in commissions annually to the agents of Virginia." Is that correctly read?

A. That is correct, yes.

Q. Is that gentleman, Mr. DeJarnette, who is spoken of there the same gentleman who has been a witness in this case?

A. I wasn't present but I believe so, yes, sir.

Q. Is that House Bill No. 151 the Act of 1938 which is being challenged in this case?

A. It is, a portion of it.

Q. Further on in his report I notice this, which I will ask you to say whether I am reading it correctly. This paragraph is headed "Casualty and Surety Companies."

"In a business, relatively speaking, in its infancy, we greatly deplore the lack of harmony and mutual confidence existing between companies and production forces. It is our firm conviction that the Casualty Companies might well [fol. 478] take a look at the experience of the Fire Companies and profit accordingly. The Agents of Virginia have heard with much concern rumors that House Bill No. 151,

regulating countersignature and commissions to non-residents will be contested. Why, we naturally ask? Hasn't North Carolina and other States had similar requirements for years? Haven't we, as agents of Virginia, exhibited a remarkable degree of loyalty to organization companies? Did we not evidence a wonderful degree of restraint when we were accorded the lowest degree of commission paid for automobile liability and property damage existing in any State other than Massachusetts? On what possible ground can this Bill be contested? It does not harm the public. It does not call for any increase in cost to the companies. From our point of view, frankly, it appears that the principal reason is that certain influential companies prefer to favor the non-resident as against the resident agent. I believe I express the attitude of an overwhelming majority of our members when I say that they will bitterly resent such action and will fight to protect their rights. I am informed that our sister Associations in the South are looking on with a great deal of interest the action of the Casualty and Surety in their proposal to contest this legislation. This attitude is not unanimous, however, as some of the companies have assured us that they would not join in contesting our bill through the courts. To those companies I wish to express my appreciation for their spirit of co-operation."

On page 24 where you made your report I would like to ask if I correctly read this extract from it. Before I pass [fol. 479] from the last one, did I read that correctly?

A. Yes, sir.

Q. Now I come to this one:

"Prior to the convening of the 1938 session of the General Assembly early in January my time was largely spent with the Legislative Committee, co-operating with the State Insurance Department and the Department of Statutory Research, working on the draf-ing of House Bill 151. It might interest you to know this bill was actually redrafted some eleven times before it was ready for the Legislative hopper. During the Legislative Session in January and February and early part of March practically every day found me either at the Capitol with Mr. DeJarnette of the Legislative Committee, or in conference with Mr. Barrlow, sponsor of our Bill, Attorneys representing the Mutual or Reciprocals, or local agents and others interested in the

proposed legislation. During these two and a half months you gentlemen will recall numerous communications with reference to House Bill No. 151, it being a part of the functioning of my office to keep the membership posted as to the progress we were making in the House and Senate. At this point I would feel guilty of gross neglect if I did not specifically refer to the excellent spirit of co-operation and prompt response on the part of agency members over the entire state. When we called on you agents to contact your representatives in the Legislature, always you responded most admirably. Strange as it may seem, work on House Bill 151 was not without its humorous side. I recall one day Ed. DeJarnette and I had been over in the legislative [fol. 480] halls since about 10 A. M. We parted at his office about 5 P. M., thinking everything was running smoothly, but before I was able to remove my coat and hat in my own office ten minutes later, the 'phone bell rang. The voice on the other end, which I recognized as that of your Legislative Committee Chairman, said: 'Oscar, come on back down here. Hell has broken loose again.' I do not recall for the moment just what that particular hell was."

Did I read that correctly?

A. Yes, sir.

Q. Is all that true that you reported in there?

A. I think it is or I would not have made it.

Q. On page 37 of this book I notice that Robert I. Boswell, who was the witness who testified here today, is Chairman of the Casualty and Surety Committee of your Association; is that correct?

A. That is correct.

Q. Now I turn to page 35 and will ask you whether I read correctly from the report of the witness Edmund T. DeJarnette, Chairman of the Legislative Committee of your Association as follows:

"I became Chairman of your Legislative Committee in November, 1937. The other members of this committee are Mr. W. Taylor Johnson of Norfolk and Mr. Warren F. Curtis of Richmond, both of whom have given unstintingly of their time and counsel. May I now express publicly to Mr. Johnson and Mr. Curtis my sincere appreciation for their valuable assistance.

"The committee was advised that the Association had

[fol. 481] decided upon three objectives for the 1938 session of the General Assembly:

"(1) The enactment of a boiler inspection law.

"(2) The passage of a law requiring all policies covering in Virginia to be countersigned by a local agent and that the local agent receive at least 50% of the commission on such Virginia business.

"(3) Some form of qualification for agents."

Did I read that correctly?

A. Yes, sir.

Q. Is the Mr. Curtis there the partner of Mr. Boswell, the witness in this case?

A. He is.

Q. I go now to another paragraph of that report which I will ask you to verify my reading of. This is entitled "Countersignature and Commission Law."

"These two fundamental principles were accomplished in House Bill 151, which was passed by the General Assembly of Virginia with three dissenting votes. The Act, as passed, permits only Resident Agents (like you and I) to countersign contracts of insurance and surety. In other words, no salaried company representatives can countersign a contract of insurance or surety since noon June 21, 1938. The Act further provides for a commission of not less than 50% to be paid to Resident Agents, (Like you and I) for the countersignature of such contracts. Please let me take a few minutes of the time of this convention to impress upon you the valuable assistance that you agents [fol. 482] gave our Committee in our work with the General Assembly. I have never received finer support from any group of people than the members of this Association gave us. It was encouraging to your Committee to go over to the General Assembly and call on some particular representative to discuss with him certain features of our legislative program and have him reply by saying, 'Yes, I am thoroughly familiar with the bill for my 'local insurance agent' has already discussed it with me before I left home and telegraphed and written me several letters urging my support of the bill since I have been in Richmond.' Please remember that there is going to be future work for this Association in the General Assembly! No matter how busy you are, when this Committee asks you to communicate with your representative, please never fail to do so."

Did I read that correctly?

A. You did.

Q. I ask you then whether you think I am justified or not in claiming that you and Mr. DeJarnette and Mr. Boswell and Mr. Roger Clark are hostile and adverse witnesses to the plaintiffs in this case?

A. I do not think, Mr. Christian, that we should be considered or feel antagonistic simply because we are fighting for what we conceive to be right and proper.

Q. You admit you are fighting the plaintiffs in this case, don't you?

A. Me, personally, no.

[fol. 483] Q. Your Association?

A. Well, we sponsored the legislation which they are attacking the constitutionality of, if you call that a fight. It doesn't necessarily involve antagonism.

Redirect examination.

By Mr. Staples:

Q. Mr. West, in some justification for the effort which the Virginia Association of Insurance Agents is making to protect what it conceives to be its rights, I desire to read from an Associated Press article under date of January 8, 1939, headed "Dallas, Texas," from which the following appears, and I will ask you to state whether I read this correctly. This appeared in the Richmond Times Dispatch:

"Chairman William O. Douglas of the Securities and Exchange Commission yesterday said, in an interview, the South would have a large regional stock exchange of its own if S. E. C. succeeds in decentralizing the nation's financial structure.

"He said a main objective of S. E. C. was to take financial control from New York and Chicago in order that control of local business may be brought home 'where it belongs'."

Have I read that correctly?

A. Yes, sir.

By Mr. Staples:

Q. Mr. West, when Mr. Adair was on the witness stand a question came up for consideration and discussion between counsel for plaintiffs and the defendants in this case, and

[fol. 484] also Mr. Adair, as to whether or not there was general practice or believed to be a general practice prev lent in the City of New York, and perhaps some other larg cities, whereby the insurance brokers in what we conside to be an unfair competitive advantage over the local insu ance agents of Virginia and other states, were accustome to giving part of their brokerage to persons who were abl to control the insurance business of large companies, th idea being that this division of commissions operated a in the nature of a bribe or undue influence to control th throwing of that business. On January 30th there appeare in the News Leader an Associated Press dispatch from Ne York which gave a summary of the charges made by Di trict Attorney Dewey in connection with the so-called mi conduct of Judge Manton of that Circuit of which New Yor City is a part. One of the charges as to money receive by Mr. Manton, alleged to have been improperly receive is as follows: "$10,000 from an insurance broker in 193 on representations by Judge Manton that he would receiv the insurance business of Kings Brewery, a firm in whic the Judge's business partner, James J. Sullivan, was trustee under the Bankruptcy Act. It was repaid when th broker failed to get the business." Have I read that co rectly?

A. Yes.

Redirect examination.

By Mr. Staples:

Q. Mr. West, do you know Mr. Ray Murphy?

A. Yes, sir, I do.

Q. What position does he hold with the Association Casualty and Surety Executives?

[fol. 485] A. Assistant Manager.

Q. Assistant General Manager?

A. I don't know his exact title.

Q. What is the Association of Casualty and Surety E ecutives?

A. The Association of Casualty and Surety Executiv is composed of the stock casualty companies, approximate 60 in number. I base this on information I obtained throug a pamphlet sent me by the said Association of Casualty a Surety Executives, titled, in effect, "The Association

Casualty and Surety Executives, what it is and what it does."

Q. Do you know whether or not the plaintiffs in this case are all members of that Association?

A. I believe they are, sir. The pamphlet that I just referred to will verify that statement.

Q. I show you a magazine entitled "The Insurance Index," published monthly, the issue at hand being for the month of January, 1939, which contains an editorial by Mr. Alvin J. Davis, the Editor of that magazine, in which editorial the following appears as a quotation from a speech by Mr. Ray Murphy, the General Manager of the Association of Casualty and Surety Executives. I will ask you to please read into the record the portion of that speech which is a quotation from Mr. Murphy's speech and which I have marked.

A. "The capital stock casualty and surety companies believe in the American competitive system of private enterprise and they practice it. They adhere to it, even in the face of unfair competition, because they know it gives posi- [fol. 486] tive protection at the lowest possible cost and, insurance being a thoroughly human business, they know that every policy that is written must be supported by continued service to the assured, not merely at the time the sale is being made or when the day arrives for renewal, but throughout the life of the policy, day in and day out.

* * *

"The only medium through which this service can be rendered consistently is the agent in the field. He is less the representative of the company whose policies he places than he is the representative of the individual or company he insures. The capital stock agent is not a salaried employe who must respond to the direction of any one company or group of companies. He is a business man, doing business in his own local community. His first consideration must be his clients. That means greater protection for the public than is possible in the case of the direct-writing mutual which operates through a salaried employe."

* * *

"The services that the capital stock agent renders are many and varied. Insurance is a highly competitive business and the agent must be alert and active to survive. That, too, is in the public interest. From time to time he must advise his clients about the changes in policy forms

and rates, giving them full advantage of increased protection. He must be ready to see that his clients receive full and swift settlement of claims, and that all the protective features of the insurance policy are brought into prompt [fol. 487] play for the benefit of the assured. All of these things are in the public interest."

By Mr. Staples:

Q. Did you ever know Mr. Murphy personally?

A. Yes, sir, I met the gentleman personally on several occasions.

Q. Under what circumstances?

A. At the agents' convention and in the Virginia Association's office in Richmond, when he appeared in connection with legislation passed in 1938, in company with Mr. Lilly and other company representatives.

Q. Is Mr. Lilly now present?

A. Yes, sir.

Q. Whom does Mr. Lilly represent?

A. I understand he is Assistant General Counsel for the Maryland Casualty Company and, as such, is on the Law Committee of the Association of Casualty and Surety Executives.

Q. Was this conference which was being held in reference to the legislation or statutes now involved in this suit?

A. It was.

Q. And Mr. Murphy was representing what interest at that conference?

A. Stock casualty companies who were members of the Association of Casualty and Surety Executives.

T. Garnett Tabb, a witness called on behalf of the defendants and being first duly sworn, testified as follows:

Examined by Mr. Staples:

Q. Mr. Tabb, I wish you would state your name, residence, and occupation, please?

[fol. 488] A. T. Garnett Tabb, 2625 Monument Avenue. My business address is 1101 East Main Street; general insurance agent.

Q. With what insurance agency are you associated in Richmond?

A. I am the senior member of the firm of Tabb, Brockenbrough & Ragland, General Agents of the Travelers Insurance Company and local agents for four fire insurance companies and several bonding companies.

Q. How long have you been connected with the insurance business?

A. Nearly forty-seven years.

Q. In what capacity or capacities have you been associated or connected with that business?

A. Clerk, cashier, general manager and general agent.

Q. Would you mind stating the volume of premium business done through your office, approximately?

A. That is more or less a secret but put it at a half million dollars.

Q. Can you state, Mr. Tabb, about what proportionate part of that is fire insurance and what part is casualty and surety insurance?

A. I am giving approximate figures because I did not know that was to be asked, but I would say $125,000 fire, $250,000 casualty and various amounts of life, personal accident, bonds, boiler and all other types.

Q. I wish you would state if your experience has been such as to acquaint you with the different functions and general scope of duties and activities in the insurance business of so-called company representatives who are employed [fol. 489] on a salary basis and the so-called commission agents?

A. I think it would be generally conceded that a commission insurance agent recognizes his first duty to his policyholders as a matter of good business policy. By that I don't mean to say that he would forget his allegiance and care for his company's interest. Frequently, however, there is some conflict between the interests of the two and the insurance agent acts as an arbitrator and frequently gets both parties together, preventing court action and finally satisfies both parties as to the justice of the conclusion reached.

Q. Has your experience brought you into contact both with the assured and the insurer, as well as the salaried representative of the insurer located in Virginia?

A. Frequently and almost daily.

Q. What casualty company do you represent?

A. Travelers Insurance Company of Hartford, Connecticut.

Q. What fire insurance companies do you represent?

A. The Continental Insurance Company of New York, Travelers Fire Insurance Company of Hartford, the Fire Association of Philadelphia, the London Assurance of London, the Old Dominion Fire Insurance Company of Roanoke, Virginia.

Q. Has your agency, with which you have been connected since your first experience in this business, handled the placing and securing of fire insurance policies?

A. Yes.

Q. Are you thoroughly familiar with the customs and practices of the fire insurance business in Virginia?

[fol. 490] A. Yes.

Q. Have you also had experience and, if so, to what extent, in the fire insurance business in other states?

A. I have placed fire insurance business in many states. I don't find their regulations much different from those in Virginia. I have passed the examination of the New York State Insurance Department for a license.

Q. Will you please state the various customs which have prevailed since your first association with this business with reference to the division of commissions between the Virginia commission fire insurance agent and a non-resident agent or producer who negotiates a Virginia coverage contract outside of the state where that contract or policy of fire insurance is sent to a Virginia agent for countersignature?

A. It has been uniform practice for many, many years to divide commissions on such policies. These policies of insurance are issued at the Home Office of the companies, wherever located, almost as frequently as they are issued by the local agents in Virginia. Both practices prevail uniformly with no differential in the commission to the Virginia agent, whichever practice is used by the particular company concerned.

Q. Would you state your best estimate of when that practice began?

A. I understand long before my connection with the fire business which covers a period of approximately twenty-five years.

Q. I wish you would state briefly the service which it is customary for a Virginia resident fire insurance agent to [fol. 491] render in connection with a fire insurance contract negotiated by a non-resident agent or broker covering a

Virginia risk where the business is referred to a local Virginia fire insurance agent in the manner you have described. I mean beginning with the time that the matter is first referred to the Virginia commission agent.

A. He first looks over the form attached to the policy, which form is supposed to furnish the bulk of the protection on the particular risk to be covered. He then figures the rates to see if they are proper and then countersigns the policy and either returns it to his home office or sends it direct to the broker in accordance with the instructions received when he was asked to countersign the policy. He may inspect the risk if he has any misgivings as to the coverage or the rate and communicate with the broker or the company if his opinion is that some fault exists in the coverage or some improvement may be possible. I would state that changes under such conditions are not very numerous because both the company and the broker have compiled it but when some differences occur and the agent corrects them he feels—at least I do when my firm signs a policy—that we have a personal liability, at least moral liability, for the correctness of the coverage and the carrying out of the contract proposed.

Q. I wish you would state whether it is customary for the Virginia resident commission agent in such a case to render substantially the same service during the life of that policy as he would render if the policy had been solely negotiated by the local Virginia agent?

A. The agent would not expect to be called on for quite [fol. 492] as much service as the agent producer but he would expect to answer any requests for service from the resident representative of the foreign corporation, if such be the owner of the property, and he would expect to render to both his company and the insured just the same service if it was needed. In fact, we usually make a practice of writing either the broker or the insured, offering our services when we countersign a policy.

—. I wish you would please state the nature of the services rendered by a resident Virginia commission agent where he himself negotiates the contract with reference to casualty and surety contracts covering Virginia risks?

A. Well, he is very particular to see that the policy is first written correctly after he gets all the information possible on which to base the policy. He expects to keep in close touch with the insured and particularly if any accident

occurs or any claim arises under the contract, and he is always looking forward to super-service to enable him to hold the risk and add to the business of the same assured.

Q. Take, for illustration, a fleet automobile liability policy and state what would be the usual service an agent would render from the very beginning of the transaction, that is, the time he begins to negotiate for the business or solicits the business up until the expiration of the contract?

A. Schedule or blanket automobile policies are growing in favor and nearly all corporations, doing an interstate business, are very open to the soliciting of an agent who knows his business and expects to write one contract in one com-
[fol. 493] pany, which usually takes up dozens of contracts with various companies and with no central authority to whom to appeal in the event of loss or rate questions or any other question under the various contracts he has formerly carried. We get a great deal of information from the home office of the company where a risk covers in eight, ten or twenty states and we also get information from the insured as to their former practice in handling their business which gives us many loopholes for improvement.

Q. I want to handle one state at a time.

A. You want an answer to a question referring to risks that cover in many cities in the state of Virginia.

Q. Or any fleet policy in Virginia that you might take to be an average fleet policy.

A. It isn't necessary to have any local agent in other towns to countersign that contract or to have any reference to it, in most cases. So the agent who writes that risk in Virginia usually does the whole job and goes to the towns, if there is any need for local service, and he might, if he incurred some purely local situation, call in some agent to help him but that very rarely arises in intrastate business.

Q. What does the agent do in connection with that—just the various acts that he would perform?

A. He sees that the policy is correctly written and the rates to the various territories where the cars are domiciled apply. There are rate classifications in Virginia that require very careful consideration; also whether they are pick-up body trucks or whether trucks, the rates being very
[fol. 494] widely apart on those two kinds of cars and it is often necessary to examine the cars personally to see whether a pick-up truck rate should apply or a truck rate, the pick-up rate being about fifty per cent of the truck rate.

He sees that the policy is correctly written as to rate and, of course, he is interested at all times in their losses and experience rating, if such rating applies, and performs every service as if the risk were entirely in his own city.

Q. Does he make more or less of a continuous study of that particular fleet and the problems that are presented by its operation and the equipment contained in the fleet, the drivers, and so forth, or just exactly what does he do?

A. Of course, he maintains a continuous interest in the risk and its loss experience and frequently has the inspection and claim departments of his company call the drivers into consultation for safety measures in which the agent frequently participates for the purpose of reducing the losses and thereby reducing the premium cost.

By Mr. Staples:

Q. Do you believe that a non-resident agent or broker living in New York or Chicago can render as satisfactory service in a case of that kind as a local Virginia resident agent can render?

A. I think the question would be answered by anyone "No," provided the Virginia agent attended to his business and for which he expected proper remuneration.

Q. Do you think that the actual contact by the agent with the physical conditions pertaining to the risk is important in rendering that type of service?

A. They should be.

[fol. 495] Q. When you spoke of being compensated for his service, what did you have reference to?

A. Some part of the commission because it is all based on commission and I never heard of any other kind of remuneration being paid for insurance service.

Q. Take, for illustration, a workmen's compensation policy which covers solely in Virginia; what is the service or work which a Virginia resident agent would customarily do from the time he begins negotiations to secure that contract until the expiration of the term covered by the contract?

A. He has to be careful about the various classifications covering the employees covered under the policy. Frequently it is necessary to take the matter up with the Virginia Compensation Rating Bureau in order to draw the line between the various classifications to be covered under the

policy and also secures adequate pay roll estimates on which the advance premium was based and sees that the coverage is adequate and properly written. He also continues his interest in it from an experience standpoint, if it is an experience rated risk, on which to compute the next year's or renewal premium. We take great pleasure in pointing out to the assured, on renewal of the policy, that we have secured a reduction in his rate due to favorable experience. In order to get that favorable experience we have inspection service and claim service discussed rather frequently, as often as necessary, because those two sources largely govern and compensation business is almost entirely based on the experience factor so far as changes in rate are concerned.

[fol. 496] Q. Does it require a personal contact with the operation of the industrial activity of the assured to properly perform that service which you speak of which is designed to improve the experience rating of the assured?

A. It is most imperative that we do that. In many cases we have to work hard on a big man, the President of a corporation, to interest him in safety and accident prevention. I know of cases where we have worked years to get a president to address his employees on the necessity and imperativeness of carefulness and other things that he can personally impress on them more than any agent or inspector and when we get a president to address his employees we have gone a long ways in accident prevention and this is peculiarly the duty of the insurance agent handling his business. In fact, the resident agent is about the only man that can get a president of a corporation to do that job.

Q. Suppose the corporation should be a foreign corporation with a Virginia manager; who would the agent take it up with in that case?

A. We would take it up first with the local manager and if the president visited the Richmond plant we would try to get the date and try to get him to do that job and if he couldn't do it or didn't wish to do it we would get a letter from him to put on the bulletin board of the plant or to be read to the employees which would emphasize that their jobs might be somewhat dependent on their paying attention to accident prevention.

Q. Would the resident commission agent call on the engineering department of the insurance carrier to render serv-

[fol. 497] ice in connection with inspecting machinery or anything of that kind during the progress of the risk?

A. Certainly. That is one of our very important services. They know the technical end and can speak authoritatively on the handling of the machines if there are machines in the plant and the agent enlarges on it from a human standpoint.

Q. What would you say as to the relative ability of a non-resident agent or broker to render the service you have spoken of with reference to the workmen's compensation policy as compared with that of a Virginia resident commission agent who is handling that same contract, either alone or in association with the non-resident agent or broker?

A. We are frequently called on by the non-resident broker to render this service. It is very expensive and almost impossible for them to keep in the same close contact with a local plant as the man living right in the city who knows the officials and patronizes them, in most cases, and he has a local influence that is very important. Most of the non-resident brokers, with whom I have dealings, call on me for that service and I frequently, through that service, get other business which I add to the sum total and make a profit for them and myself too.

Q. Do you know of any valid substantial reason why a distinction should be made in the basis of the compensation of local agents or a division of commissions in the casualty and surety lines from that which prevails in the fire insurance business where a Virginia risk is negotiated exclusively through a non-resident agent or broker?

[fol. 498] A. From my experience I think the service of a local Virginia agent with casualty lines and surety lines should be really more valuable than in fire insurance. The reason I say this is that fire insurance usually concerns a fixed structure or its contents which can be readily inspected and its value ascertained, whereas in the case of surety lines, and particularly casualty lines, the ramifications of coverage are tremendous and changing continuously. The agent with real knowledge of his business finds many places where the insurance coverage should be improved and does improve it. In addition he adds coverages which are essential and, in so doing, advances the interests of the broker, the insurance company and the insured, as well as himself.

Q. I notice that you represent two Travelers companies. One seems to be a fire company and the other a casualty and surety company; is that correct?

A. No, sir, casualty company only. The Travelers, and its companies, handle no surety business. I represent the Travelers Insurance Company for casualty business and the Travelers Indemnity Company for boiler, plate-glass, burglary and other lines, and the Travelers Fire Insurance Company for fire insurance, marine and allied lines.

Q. Is there a common ownership or affiliation between those various companies, do you know?

A. The Travelers Insurance Company owns both the other companies and operates them in the same home office building.

[fol. 499] Q. Do they all follow the same system of compensation to the Virginia resident agent as to business originating outside of Virginia, covering Virginia risks?

A. No, sir, the Travelers Fire Insurance Company adopts the long-established practice of paying the Virginia resident agent for countersigning the policy half the commission, whereas the other two companies do not do that.

Q. They do not pay the Virginia resident agent anything unless he happens to be associated with the risk at the request of the broker or the assured; is that true?

A. Yes, sir, that is true.

Q. I notice in an advertisement of the Travelers Insurance Company, with reference to automobile liability coverage, there appears this statement: "For the Travelers has thousands of agents and hundreds of claim experts all over this continent, ready to take over your responsibilities promptly, no matter when or where an accident happens." What do you understand to be the meaning of that advertisement which appears in the February 4th edition of the Saturday Evening Post?

A. The aforesaid advertisement is one of many nationally circulated advertisements by the Travelers Insurance Company which are of material value to their agents in building up business based on national and Canadian service. It means, under full understanding with the Travelers Insurance Company, that these advertisements are meant to be lived up to by every Travelers agent, whether located in a hamlet or a city. Frequently Travelers agents are called on for service, especially under automobile policies, where the accident occurs in his town or city and the in-

[fol. 500] sured has a card attached to the Travelers policy giving him this service. Agents are frequently called on Sundays and nights when the Claim Departments or offices of the company may be closed, to render service when accident or even other things, not actually covered under the policy, come up and the visiting automobile owner wishes some local service. We take great pride in this service and render it promptly and cheerfully.

Q. When the word "agents" is used in that advertisement, does that include resident commission agents as the term is used in the Virginia statutes, such as your agency?

A. Yes, sir, because of the fact that such commission agents are the only representatives of the company in practically all the territory where these accidents occur. Branch offices are located about one to a state and, therefore, when an accident occurs it isn't usually in a big city and, therefore, the local agent is the man who is supposed to and does give this service.

Q. Mr. Tabb, up to the time of the passage of the 1938 Act there has been no established practice with reference to association of a Virginia resident commission agent with non-resident agents and brokers, has there, in any line except the fire insurance line?

A. There has been no such practice unless the non-resident broker placed the business directly with a resident Virginia agent, in which case the agreement between them governed the handling of the business.

Q. Has there been a sufficiently large volume of that to enable you to say that there is an established practice in that connection?

A. No, there has been comparatively little of it.

[fol. 501] Q. I wish you would state whether or not in handling fire insurance contracts which have been sent in to you by non-resident agents or brokers, you have discovered [fol. 502] any flagrant irregularities or matters which you felt were not proper and should be corrected, and, if so, give an illustration or two of what you have in mind?

A. I wouldn't say that we have had very many cases of flagrant irregularities. We have found errors in forms in policies occasionally and have made suggestions that brokers have usually accepted as correct in the writing of policies sent by them. Our principal findings of errors have been where we secured business which had formerly been written by non-resident brokers. I mean by that the

securing of the business by our own office, in competition with the non-resident broker, who had formerly carried the line. I have in mind one case within three hundred yards of where we sit, involving a very large line written by a western broker, in which we found one or more very large policies written in non-admitted companies. When I called the attention of the assured to this irregularity and danger to their own protection, he was very much amazed that the broker had placed his risk in a non-admitted company and this, among other things, resulted in my securing the whole line. I think it fairly illustrates the point that non-resident brokers are guilty oftentimes of placing Virginia business in non-admitted companies and thus depriving Virginia of its tax on the premium and submitting their assured to trouble should there be a loss under controversy and, therefore, no recourse to the policyholder under Virginia law.

Q. By a non-admitted company do you mean a company which is not qualified to transact insurance business in Virginia?

[fol. 503] A. Yes, sir.

Q. Mr. Tabb, I hand you a paper marked Defendants' Exhibit B, which is a copy of a resolution passed on February 13, 1939, by the Board of Directors of the Virginia Association of Insurance Agents and I will ask you to please read that resolution?

A. Yes, sir, I have read it.

Q. I wish you would state whether or not, in your opinion, that resolution is in conformity with the general practice which has heretofore prevailed in Virginia in connection with the fire insurance company business where a non-resident broker has procured a contract and the contract is sent to the agent in Virginia, not by the broker but by the insurance company itself, and the broker has made no direct contact with the Virginia resident commission agent and, if it is not in complete conformity, please state what differences there may be?

A. This resolution expresses in large part what has been the custom but is somewhat more far-reaching in one particular and that is contact with the broker and the insured. This contact has been made in many cases but not a uniform practice. When a policy is sent to my office by a company we frequently have to write back and find out the name of the broker and insist on doing so in order to check up and see if the broker has a proper Virginia non-resident

broker's license which would permit the division of commission with him. We check the form of the insurance and go into many particulars, and the resolution alluded to is simply a forward step in rendering more efficient service and making it a uniform practice.

[fol. 504] Q. Is it or not your opinion that the requirement of the Virginia law that the Virginia resident commission agent shall be associated with the contract or policy to the extent of receiving fifty percent of the commissions has brought about a different situation and condition from that which existed prior to that legal requirement?

A. Yes, it is certainly to be expected that an agent receiving half of the remuneration under any insurance policy would consider himself morally obligated to render every possible service, both to the assured, the broker and the company. I would like to add this: The agents of the state of Virginia will certainly feel that this obligation is particularly important as it implies and would virtually make certain the renewal of the insurance in which he has an equal interest with the broker.

Q. As I understand your answer, you feel that the non-resident broker and the Virginia commission agent, associated with the contract, are jointly interested in servicing the business and retaining the business?

A. Yes, sir, without doubt.

Q. Mr. Tabb, you are a member of this Association of Virginia Insurance Agents, are you not?

A. Yes, sir, former President.

Q. Do you hold any position with the Association now?

A. No, sir.

Q. Do you think that the membership of that Association is representative of the agents who transact the largest bulk of the business of insurance agents in this state?

[fol. 505] A. Yes, sir, practically all of the agents of the state are members and I would say, without knowing accurately, that ninety percent of the insurance business of the state of Virginia is written and controlled by the members of the Virginia Association of Insurance Agents.

Q. During the life of a casualty or surety contract, is it or not frequently the case that an agent is called upon by the assured to explain the meaning of the contract and what the assured should do to protect himself under its terms?

A. Frequently the agent who countersigns a policy is called on for that service. Casualty insurance is under con-

stant changes, meeting modern conditions, and new policies are being written to cover these changes and agents have to be real students at the present time to properly represent both the policy holder and the company.

Q. Does a successful commission agent in Virginia interest himself in the making of rates and regulations by the regulatory bodies of the state and appear there, if necessary, or take any other steps in connection with that that he thinks appropriate?

A. Yes, agents, in order to sell business, have to be conversant with rates and forms and rules and constantly we have debates with the rating authorities as to classifications and experience ratings and in all other matters entering into the premium cost. We feel that we represent both the policyholder and the company and endeavor to maintain an equal balance between them. So it necessitates familiarity with all the matters that go into an insurance con- [fol. 506] tract. In claim matters frequently an agent has to point out to his company wherein the facts justify a claim payment and those facts are frequently overlooked by the professional claim adjuster.

Q. Mr. Tabb, some question has been raised with some of the other witnesses as to whether or not the records of the commission agent in Virginia with reference to business passing through his office, on which he receives commission, are customarily kept in such a manner as to provide information to the taxing authorities, if they desire to investigate the records, from which it may be ascertained what is the total amount of premiums written by the insurance companies passing through his office, including not only the business which the agent himself originates but also that which is sent to his office which is negotiated entirely outside of the state. I wish you would please state the nature of the records kept from that viewpoint?

A. For the most part we keep a copy of the record on which the policy is based, showing the premium, rate, the amount of insurance and other particulars. Some forms of policies, known as I. U. B. and F. I. A. forms of fire insurance, covering many states, we do not receive records of but checks for our portion of the commission, and in such cases we would not have a full and complete transcript of the policy contract.

By Mr. Staples:

Q. Could it be ascertained in that case what the amount of the premium for the Virginia coverage is?

A. Yes, it could be readily secured from the company and [fol. 507] very accurately computed from the amount of our commission which is, of course, based on the premium applicable to coverage in the state of Virginia.

Q. I believe it appears from the record, in the testimony of Mr. Adair, that a branch manager of a casualty or surety company, when he is called upon to countersign a policy, regards it as merely a perfunctory matter and does not even examine the policy to determine its accuracy or the correctness of the rate or any other matter unless he examines it as a matter of curiosity for his own information. I wish you would state your opinion whether or not a Virginia resident agent, who is required by law to be compensated to the extent of fifty percent of the commission involved in such a case, would view the transaction in any such light as that?

A. He certainly should not.

A. I would like to enlarge that answer. The Virginia resident agent must realize that the countersignature of the policy, involving a substantial commission to himself, is not a mere perfunctory act and he, for his own profit on future business, allied with the contract he signs, would render service and be very particular about applying his signature to a contract without knowing it is correct. Personally, when I sign a policy I feel that I am taking on some responsibility. In the case of a branch office salaried employee of a company, his signature adds nothing to the contract. It is only one more signature of the company issuing the policy, whereas the resident Virginia agent has personal responsibility which the company might not share [fol. 508] if it were claimed he had broken a Virginia statute or in any way made himself liable in addition to the company's liability.

Q. Mr. Tabb, I wish you would please state whether or not in your opinion the functions and duties of a Virginia resident agent who countersigns or is associated with a contract negotiated outside of Virginia would provide to such Virginia resident agent an incentive, not only to see that the contract is correct when he countersigns it, but also

to service same during the life of the policy and, if you are of this opinion, please state your reasons therefor.

A. Of course, he would appreciate his obligation to service the policy after seeing the policy written, both as to coverage and rate. I emphasize the fact that the Virginia agent places himself in a responsible position when he affixes his signature to a contract of insurance. I believe the continuance of his license by the State Insurance Department might be vitally concerned if it were proven that he had signed a policy which did not conform to the statutes of Virginia.

Q. Do you believe or not that the Virginia resident agent would have an incentive to render service in order to participate in the commissions resulting from the renewal of that policy or contract?

A. Certainly he does not stop his interest on receipt of commission on the one policy and it is our custom to visit the broker at the earliest opportunity and express to him our appreciation of the business and cultivate him for its renewal and more business and, if possible, to point out to [fol. 509] him any improvement possible in the contract and the coverage which, of necessity, impresses the nonresident broker with your knowledge of the business and your interest in his behalf, as well as your own behalf. I find brokers very cooperative under such circumstances and it also tends to keep the business with the company issuing the policy, rather than to have it changed around to other companies on expiration.

Q. If, as I believe you have stated, you consider, under the new Virginia statute, that the Virginia commission agent and the broker are joint owners of the expiration, so to speak (I believe that is the term used in the insurance business) is it or not true that the Virginia resident agent would have as strong incentive to render service to the assured and cause the assured to feel that the contract has been properly serviced by the resident Virginia agent?

A. I think it is universally the practice of Virginia agents to render this full service. We usually consider the broker, producing the contract, as entitled to first have objections or corrections brought to his attention and rarely is any objection raised by the broker to such changes as may be suggested by the Virginia agent who countersigns the policy and can show his familiarity with the risk concerned. The

interests of the two, broker and Virginia agent, are usually absolutely in accord.

Q. What would you have to say upon that same subject with reference to service rendered throughout the life of the policy after it has been written?

[fol. 510] A. The Virginia agent, of course, expects to render any service necessary throughout the life of the contract and the more service he can render the more apt he is to retain the business and the good cooperation of the non-resident broker who controls other business as well as the policy immediately in hand.

Cross-examination.

By Mr. Christian:

Q. Why is this law a vehicle to get for these non-resident assureds these so-called services of Virginia agents to which you refer? Are they not able to get them without this law by the simple expedient, when they place the business with the non-resident agent or broker of saying to that man, "I want you to retain half of this commission and I want you to get Mr. T. Garnett Tabb of Richmond to help you handle this business and give him the other half." Isn't that free and open to every assured without help from this law?

A. Of course, that is perfectly possible but I would say entirely Utopian.

Q. Why do you think it is Utopian?

A. Because the non-resident agent or broker has principally the profit in the transaction as his main interest and many agents in the state might be willing to do what has been termed a perfunctory act, and in large measure, it has been a perfunctory act heretofore before the passage of the new law and they are willing to do things with no idea of rendering any service. Of course, many brokers in [fol. 511] the past have been entirely willing to give over the work to an agent but that is rather the exception than the rule and that doesn't protect the assured or the company, and the assured in many cases doesn't look into it. Just as I told you about a case where a broker placed a non-admitted company's contract with a big assured within three hundred yards of this office and he was astounded when I told him the policy had no standing in Virginia.

Q. I am asking you why it is that the assureds, if this is a good law and if they want the services of a man like you, don't go to Johnson & Higgins or Marsh & McLennan and say, "I appreciate you are more or less specialists in my line of business and I appreciate you should get half the producer's commission for advising me and carrying my insurance problem load for me, but I am not willing to have you do that unless you get Mr. Garnett Tabb in Richmond and Mr. A. in Baltimore and Mr. B. in Washington and Mr. C. in New Orleans, and so on, and give them half of that commission so that I will know they are just as much interested in my business as you are and so that I will get their service." I am asking you hasn't that been free and open to assureds who are not residents of Virginia but with coverages in Virginia all the time without this law? That is a simple question that I should think you could answer yes or no.

A. No, I wouldn't want to answer a question yes or no.

Q. Hasn't it been free and open to assureds to do that if they want Mr. Garnett Tabb's services?

[fol. 512] A. Of course, an assured could make such a request but whether his broker would accede to it, or not, is another question.

Q. Then wouldn't it lie with the assured, if his broker wouldn't accede to it, to part company with that broker and give all of that business to Mr. Tabb?

A. It has been done.

Q. And this law isn't necessary to effect that in a case where the assured values Mr. Tabb's services, is it? That has been done to Mr. Tabb's benefit and the benefit of the assured, no doubt, in many cases, has it not?

A. I think so but the question is or rather the simple answer is that the assured has not in most cases considered any such improvement in his coverage and has, in the case of fire insurance, had it. It is a matter of fifty percent division on fire insurance for many, many years.

Q. Do not these same assureds that take casualty and surety coverage also take fire coverage?

A. For the most part and I dare say, or risk the opinion, that they think the local agent gets something out of the casualty business but that is something they haven't had presented to them. They never have thought of it in that light.

Q. Your statement on the record then is that people like Liggett & Myers, or the DuPont Company at Ampthill or the Life Insurance Company of Virginia or the Greyhound Lines don't know whether Tabb is getting a part of the commissions on their business or not? Is that your statement?

[fol. 513] A. No, they know that I am getting it on the fire insurance.

Q. I am talking about casualty and surety?

A. I don't think they have ever given it any thought and I don't know what would cause them to give it much thought.

Q. Then Tabb never has talked to them about any casualty and surety business except what he has placed with them up to the time of the passage of this law?

A. Well, I have told you that it has not been customary for agents to go direct to people like Liggett & Myers and DuPont but go through the broker as a matter of courtesy and the broker rarely, if ever, objects to recommendations and suggestions by the local agent.

Q. Your point then, as I understand it, is that you think these assureds think that they are already getting your services as it is and are entitled to your services as it is?

A. I don't think they could single out any individual except in cases where I mentioned this morning of certain big companies that designate the agents in Virginia who shall get their business.

Q. I mean these others. You think they think they are getting the service of some Virginia resident agent?

A. They think they are getting the service of some resident agent or the equipment of the company or full protection under their policy but the more intimate and close service of a local man has never been, in most cases, in my judgment, brought to their attention.

[fol. 514] Q. In most cases the principal officers of these foreign corporations with offices outside of Virginia are not in Virginia to have it brought to their attention, are they?

A. That is correct and, therefore, they just go along in the same rut until they strike some snag in a claim, or something of the kind, and then the local agent is called in or the local representative, if they can't get together. It is a matter of development. I can't give you exact answers to a question that involves relations that are constantly shifting and changing.

Q. And you are unable to answer or give me what is your explanation of why it is that if these assureds think they have anything to gain from the services of such a man as Mr. Tabb, they don't, without the help of this law, arrange for them to be made available by a division of the commission?

A. I think that if they were fairly told by the broker what this law meant, ninety-nine and one-half percent of the foreign corporations would be delighted with the Act and feel that they were getting a great deal more value for their premiums than they are now getting, without additional cost to them.

Q. Where a concern like the Homestead Hotel or the Greenbrier Hotel or the Liggett & Myers Tobacco Company or the Pet Milk Company or Marshall Field & Company at Martinsville is placing its insurance with Marsh & McLennan or Johnson & Higgins, or whoever they may be placing it with, have you in all your years as an insurance man sat back and never solicited any of those people to avail themselves of your services?

[fol. 515] A. Well, two of them in that bunch I have handled personally.

Q. You have handled it because you wanted to handle it and they wanted you to handle it; isn't that right?

A. Yes, sure.

Q. And you were close to a whole lot of other people and told them what they would have to gain by your handling it, who for one reason or another haven't adopted your views but have gone on and handled it through the brokers, haven't they?

A. Yes. Of course, it is a perfectly free country. A man can patronize me or somebody in New York or wherever he pleases.

Q. You said just now that the reason they didn't avail themselves of your services or the services of a person like you was that they didn't know. I am putting it to you now that people like yourself spend their lives making them know that they ought to patronize you instead of these brokers, don't they?

A. You would be surprised, Mr. Christian, how little residents of Virginia solicit such accounts as you have mentioned because they find that business by those companies is not placed entirely on the merits of the proposition but largely through personal associations of directors and offi-

cers who want the commission to go to some designated relative or friend.

Q. How do these agents find out that that is so? Don't they find it out by going and soliciting these nonresidents of Virginia?

[fol. 516] A. They do in some cases and others they just give up as hopeless.

Q. Don't they find it out by getting on the train and going out of Virginia to the home offices of these non-Virginia companies and try to persuade those people to put their business through Virginia agents and get rebuffed? Isn't that the way they find it out?

A. Yes, they find it out that way but the Virginia agent is not always rebuffed. He doesn't always get the business straight to him but in many cases they direct their broker to place the Virginia business with this man, knowing that the commission will be divided.

Q. And you don't need the help of this law to get the commission divided in those cases, do you?

A. Well, no, we don't need the law to make a man give us business. This law doesn't make him give us business. It simply gives us a part of the commission for services rendered.

Q. Mr. Tabb, I want to ask you this question, which is a departure from what we have been discussing: In some of your discussions with Mr. Staples this morning you spoke of your custom in connection with handling insurance in association with brokers who were non-residents and spoke of your custom in countersigning to carefully look at the policy and to do this and to do that. Am I to understand that in addition to cases where brokers associate you with them in casualty and surety business and get you to take [fol. 517] an active part with them and receive a substantial part of the business or where assureds have caused the broker, by their directions to do that, you have been, throughout the years, furnishing these countersignatures and other services at the request of casualty and surety companies or did you mean to discuss your custom with reference to fire business? Is that what you have been doing all of these years?

A. I had particular reference to fire business.

Q. And where you have been speaking about your custom in these countersignature transactions, you have been

talking about the fire insurance business and not the casualty and surety?

A. Yes, sir, because it hasn't been the rule for casualty policies to be sent to a local commission Virginia agent for countersignature. The new law changes that.

Q. I got the impression from something you said that you thought if T. Garnett Tabb countersigned a contract covering in Virginia and produced outside of Virginia that in addition to the responsibility that might rest on the company for having that policy illegal in some way, there was a responsibility that might rest on T. Garnett Tabb if it was illegal in some way and might endanger his license?

A. Yes, sir.

Q. I see the impression, however, that you got that if Mr. Lewis Adair or Mr. Osborn or Mr. MacNeil countersigned that policy no responsibility would be put on him and [fol. 518] that his license wouldn't be endangered, however illegal the contract was; is that what you intended me to infer?

A. I was sufficiently familiar with what the State Insurance Department might consider is the difference between the license of a branch office manager and the license of a Virginia commission agent. To answer your question fully, I think that whatever be the penalty to the branch office manager, the company would bear it, whereas the independent commission agent would stand on his own.

Q. Don't you know that until June, 1938, in all the years you have been in the insurance business in Virginia, these three gentlemen I have mentioned have had precisely the same kind of license that you have had?

A. Yes, sir. I knew that their license was the same form of license but just what construction the State Insurance Department would apply to an act by a company manager and a local agent is, in my opinion, one that I cannot answer and I think would be different.

Q. Do you know of any reason why one person licensed in the same manner that another person is licensed should be held to a different degree of accountability for his acts under his license than the other person is held to?

A. Yes, sir. While the law provides the issue of the same character of license, the difference in the duties of the two persons is well known by the Insurance Department [fol. 519] and the Corporation Commission and I think

would call for different treatment in event of an act committed by one or the other.

Q. Let us take that part of rebating, for instance. You think that a salaried man might permissibly rebate, even though a non-salaried man might not permissibly rebate? Is that the idea?

A. No, sir.

Q. Let us take discrimination. Do you think a salaried man might permissibly discriminate, even though a non-salaried man would be in trouble from discriminating?

Q. Do you think there is any difference between their relative rights to discriminate?

A. I think if the salaried manager discriminates the penalty would be applied to the company either directly or indirectly, whereas the penalty applied to a commission insurance agent would be borne by him, personally, entirely.

Q. Some of these penalties are penalties of imprisonment. Your idea is that a penalty of imprisonment would be imposed upon some person other than the salaried agent who incurred that penalty because he is a salaried man; is that right?

A. I am not sufficiently familiar with the law on that, but, of course, I wouldn't think that there would be any difference in regard to imprisonment.

Q. Suppose there is a law that specifies that a policy shall be in a particular form. Is it your idea that if you sign a policy that is in an illegal form you incur some greater [fol. 520] risk under the Virginia statutes than if you were drawing a salary as an agent when you signed that policy on an illegal form.

A. My idea is that if I signed it I am personally responsible, so far as fine and revocation of my license, and so forth, but if a salaried manager of an insurance company did it I think that the penalty would be borne by his company and if his license was revoked he would be transferred to some other territory and he would, therefore, suffer no real personal loss.

Q. Couldn't you have the same agreement to protect you for the doing of illegal acts that Mr. Osborn might have to protect him for the doing of illegal acts if you and the company for whom you were doing the acts made this same agreement that Mr. Osborn was going to make with reference to his illegal acts?

A. I don't think so. I don't think any company would agree with a local agent on commissions to go as far as with their own employees.

Q. I gathered that when you countersign a contract of insurance for a casualty or surety company, pursuant to the stipulation of the contract that it shall not be binding upon the company until it is signed by the duly authorized representative of the company, you thought that when you signed that contract you weren't signing it as a representative of the company; isn't that correct?

A. No, sir, I am signing it in a dual capacity, both as representative of the company to conform with requirements [fol. 521] of the policy contract and the Virginia law and also, further, to testify to its correctness in every respect, both for the protection of the policyholder and the company.

Q. By what legal processes did you reach the conclusion that Mr. Osborn isn't doing that when he countersigns that contract if you are doing it?

A. Well, the answer, Mr. Christian, is this, and this doesn't refer any more to Mr. Osborn than it does to Mr. MacNeil or any other manager. He is under the absolute control and instructions of his company from whom he draws his salary and has little or no voice in the relations between the policyholder and the company, whereas an agent is an independent person who often tells the company something that he wants done before he will countersign it and in many cases gets that change made, whereas a company-paid man necessarily feels a delicacy in doing that and I don't think hardly ever does it because he just accepts what his company tells him just like your clerk out here would accept, without question, something you might tell him to do, although he might in his inner conscienceness disagree with the propriety of it entirely. In other words, the insurance agent is a free agent, whereas a company manager is a salaried employee of the corporation from whom he receives a salary.

Q. Is it your idea that a clerk in Greentree's store who works on a commission basis is like you are, whereas a clerk who works in Greentree's store on a salary basis is like Mr. [fol. 522] Osborn?

A. No, sir, the distinction is widely different. A clerk in Greentree's store on a commission basis, in my judgment, works much harder than a salaried employee and that

is about the only difference between a salaried man in Greentree's store and a commission man.

Q. What difference is there between you and Mr. Osborn except that you work on a commission just like the commission clerk in Greentree's store and he works for a salary like a salaried clerk in Greentree's store.

A. The difference is as wide as the poles. I am an entirely free agent and own my business, whereas the branch manager has no interest in the business. If he dies he has nothing to leave. If an agent dies his business is just as much his as the residence in which he lives.

Q. If the clerk in Greentree's store who works on a commission basis dies, his good will is inheritable or assignable by his administrator or his wife or his son or his daughter just like yours is, isn't it?

A. I wouldn't say he had any good will to assign because the purchase of clothes is an independent proposition and doesn't run from year to year like insurance policies and a business you can build up.

Q. You say you own your business. Does the Travelers Insurance Company have anything to do with whether you will continue through the years putting contracts with it? [fol. 523] A. No, sir, I can resign tomorrow and take every dollar of premiums in the Travelers that I have on my books and they have no interest whatever and have so declared over their signature.

Q. And they can discharge you tomorrow and prevent your selling their contracts any more, can't they?

A. They can but they can't renew any of my contracts.

Q. But that is not the proposition. The proposition is whether you control as your business the right to act as the agent of the Travelers Insurance Company. That is what you have been doing, isn't it?

A. Yes, but that doesn't concern at all the ownership of the business. The business is just as valuable in another company as it is in the Travelers.

Q. Don't you see in the newspapers every day where a man who has been working for O. H. Berry & Company will advertise that he has left O. H. Berry & Company and gone to Miller & Rhoads, with the idea of taking custom there?

A. Certainly.

Q. You don't claim to do any more than he can do in that regard, do you?

A. Yes, sir, many, many times more than he can do because my association with my policyholders is an entirely different association from a merchant selling goods.

Q. You still stick it out. I understand it, that when you sign a contract for the Travelers Insurance Company there [fol. 524] is some kind of responsibility that you incur to the assured that Mr. Channing F. MacNeil, the branch manager of a company here in Richmond, does not assume to the assured when he signs an identical contract for that identical company; is that correct?

A. Yes, sir.

Q. And you say that that is so even though the assured is a resident of another state who doesn't know that there is such a person as Tabb and doesn't know whether MacNeil, or Tabb, either or both, are salaried or commissioned people, and who wouldn't know you if he met you on the street and wanted to have nothing to do with you and has asked you to do nothing for him; is that correct?

A. Yes, I think, Mr. Christian, the whole difference would come in in the event of a claim or a difference between the policyholder and the company issuing the policy. He would then very quickly find out who Tabb was and his responsibility and would doubtless call on me for service and I think he would have a perfect right to do so whether he liked me or didn't like me.

Q. And you think there is something inherent in your individuality which gives him some kind of a call on you that he wouldn't have on Mr. MacNeil, notwithstanding he never heard of either one of you before?

A. I would not say it is a case of personality whatever. It is a question of independent agency as compared to a salaried company employee.

[fol. 525] Q. Your only relationship with him has been that you have written your name on a contract that he bought from the Travelers Insurance Company. MacNeil's only relationship with him is that he signed his name on a contract that the assured bought from the Travelers Insurance Company. You assert here on the record that the mere fact that you happened, without that assured's knowledge, to be a commission man and MacNeil, without the assured's knowledge, happens to be a salaried man, that creates some difference between the rights and causes of action which might exist against you from the rights and causes of action

that might exist against Mr. MacNeil? Is that the proposition?

A. I do so assert on the basis, not of whether he knows when he gets the policy any difference between the branch manager and the Virginia agent, but the facts are not changed by his ignorance.

Q. What is the writing or the verbal expression that you have given him, when you sign your name on that policy, that differs from the writing or verbal expression of obligation which MacNeil has given him? Where does that right against you or that duty upon you arise when you do precisely what MacNeil does and the man knows nothing of either of you?

A. The difference arises from the different powers of the two persons signing the contract. The branch manager's powers are practically nil because he signs on behalf of his company and adds, in my humble judgment, nothing to the policy. The local resident agent, on the contrary, signs in [fol. 526] his independent capacity as an insurance agent and his duties, obligations, and powers are vastly different.

Q. Suppose that an assured placed that contract with a broker in Maryland or in West Virginia and all you did was to authenticate the policy for the company; you still say that you are in a different category from Mr. MacNeil?

A. Yes, sir, very different.

Q. Speaking of this law, and without waiving the objections which I have made to the testimony about this agents' Association and the introduction of its resolutions, do you think that the requirement of that resolution will have the effect on some agents of making it seem to them in their interest to get out of the Association so that they will be relieved of the burden of contacting assureds and incurring the hostility of the producing agent or broker as a result of forming contacts with his customers as required by the resolution?

A. I think I could only answer that from my personal attitude because, of course, I have no means of judging what the other insurance agents might conclude. I would say though, it seems to me in their own interest they would prefer to live up to the resolution because I believe it will make for an increase in their business, better relations with the broker, if conscientiously lived up to as intended by the resolution, and would hold business for their respective companies when the service is rendered that now, under other condi-

[fol. 527] tions, is constantly changing between different agents and different companies. I think it would tend to stabilize the business in the hands of an agent who gave the service contemplated in the resolution.

Q. Is it your thought then that if I were a New York or Baltimore producing agent or broker and I had the election of getting a Virginia countersignature on my Virginia business from a party like Mr. Tabb who I knew, obedient to this resolution, was going to contact my assured or to get my Virginia countersignature from a gentleman outside of the Association and who was not obligated to contact my assured, that I would prefer having Mr. Tabb do it and contact my assured rather than have the other man do it who wouldn't contact my assured? Is that your point?

A. No, that is not my exact point. I think a broker of standing outside of Virginia would feel safer in the hands of an established agent, living under the ethics of the Virginia Association, than to trust his interests to some agent who resigned from the Association in order to incur the favor of non-resident agents or get more business than he could get living up to the ethics of our profession.

Q. Supposing that the ground of his resignation was the ethical ground that your Association required him to do the unethical act of contacting his assured. Do you think it would make me think less of him because he got out of an Association that required of him what he thought to be an unethical act?

[fol. 528] A. I think Mr. Christian will agree that ethics change from time to time and mean, in my opinion, the practice of the accepted authorities and agents in any state. What were ethics fifty years ago are not ethics today and in many cases what are high ethics today in every profession would have been looked down upon fifty years ago.

Q. What were ethics for the members of the Virginia Association on February 12th had ceased to be ethics on February 13th when it passed this resolution, hadn't they?

A. That might be true but, as I just said, ethics are what an association adopts. I imagine that the ethics of the Bar are changed when the American Bar Association passes an edict to change your ethics. You adopt the new code and that is what we do in the insurance business.

Q. I simply use the American Bar as an example but I think I could go further. I don't believe that the National Association of Insurance Agents would criticize this resolu-

tion one iota. In fact, I would call your attention to the fact that the General Secretary of the National Association approved the resolution and is thoroughly familiar with it.

Q. How do you know he approved it?

A. I saw him read it in my presence, and I am satisfied that he approved it. He did not say he didn't and I assumed that he approved it because he passed it to me to read.

[fol. 529] Q. Do insurance brokers belong to the National Association of Insurance Agents?

A. Yes, sir, they do.

Q. I understand then you would have the Court believe that as members of that Association they would concur as you think, in this resolution of the Virginia agents' Association?

A. I don't know that all of them would concur but I believe that the leading ones who have a high conception of the profession of insurance would agree to it and I think it is like many other things; it is subject to test to see if it stands the acid test of practice and good ethics and, like any other ethical ruling, is subject to modification or extension if experience shows that that is necessary.

Q. You spoke yesterday about your efforts to insure safety. Are you aware whether or not there are laws in the State of Virginia under the administration of the Motor Vehicle Commissioner that are directed toward safety in the operation of motor vehicles and in the equipment of motor vehicles?

A. Yes, sir.

Q. Are you aware that there is a full time staff, including the Motor Vehicle Commissioner and his deputies and the State Police force, and so on, that is busy making inspections and observing traffic all the time for safety purposes?

A. I think that that bureau is probably very much undermanned, if we citizens of Virginia expect to look to them entirely for safety measures.

[fol. 530] Q. Do you think that the efforts of yourself and your colleagues are greatly helpful to that department?

A. We not only think so but we know it. We have cut accidents thirty to fifty per cent on fleets in the City of Richmond and it has been acknowledged by the owners of those fleets that our safety measures caused that result.

Q. When you speak of "our", are you talking about the agents or the companies?

A. The agents with the companies perform that service.

Q. Are you aware of the fact that the Code of Virginia sets up a Department of Labor and a Commissioner of Labor and a Safety Code Commission and closely regulates safety matters in industrial establishments and pretends to supervise those matters?

A. Yes, I know that such exists but I don't believe that the citizenry as a whole thinks it is sufficient. For example, the Richmond Community Fund pays a substantial amount annually for the maintenance of the National Safety Council which has as its particular function the prevention of accidents in the City of Richmond.

Q. Have you ever studied the safety provisions of the Motor Vehicle Code and the Motor Vehicle Carriers Act and the Protection of Employees Acts of Virginia?

A. No, sir.

Q. You are not prepared to discuss with me the efficacy of those measures?

A. Yes, from actual observation and practice I have good [fol. 531] ground to discuss it with you but as to the printed regulations, I have not.

Q. Were you aware, until I told you of it, that the Commissioner of Labor had any responsibilities for safety in this state of employees?

A. I never took much cognizance of it because I have never personally seen any results from it.

Q. You don't know the provisions of the laws which he is directed to enforce?

A. No, sir, I am not an authority on that law.

Q. Do you know about the legislation in Virginia with respect to the Department of Mines and the regulation of labor in mines?

A. In a very moderate sense, yes, because I, for some years, wrote employer's liability insurance on mine risks.

Q. But you think you can assist in the safety of operation of mines?

A. Yes, I do think so, decidedly.

Q. What about the Workmen's Compensation Act? You are aware, I suppose, that has many provisions in it designed to promote the safety of employees, do you not?

A. Absolutely, but one more help is very useful and owners of those plants appreciate the service rendered by agents and insurance companies in practical furtherance of that safety condition. They feel that they pay something

for it and we, as agents, think they are entitled to receive our individual and continuous attention to safety measures.

[fol. 532] Q. Can you point out the contents of any of the safety provisions of the protection of employees laws of the state or the workmen's compensation laws of the state and call my attention to any of them?

A. I think there are certain resolutions as to the inspection of boilers and safeguarding the machinery but my knowledge is more general than specific.

Q. Are you aware that the unions have skilled employees around the state who put a great deal of their time and energy and effort into this safety program of which we have been speaking?

A. From observation and experience, Mr. Christian, I don't think that those measures have filled the entire bill.

Q. I didn't ask you whether they have filled the entire bill. I asked you if you were aware that those organizations greatly stress the safety problem and seek to make employers provide more safe appliances and methods? Are you aware of that or not?

A. I am aware of it in rather a vague way because in our dealings on safety measures we don't take into consideration any safety measures that might exist in a plant. We use our own safety engineers and our own arguments for compliance with our suggestions, regardless of any Act or law that might exist.

Q. You have reference to the company engineers, I suppose, rather than the agent's engineers?

A. Some agents have their own engineers.

[fol. 533] Q. What percentage of agents in the State of Virginia?

A. I would say very small. I was going to say that that is small but that is one of the services offered by insurance companies on which they make a special appeal to get an agent to represent them. That is one of the services that we agents are given in order to justify representation of an outstanding insurance company.

Q. I am told that in your testimony you have referred to the National Safety Council. Do you recall doing that?

A. No, I said this local one, Richmond Safety Council, paid for by the Richmond Community Fund.

Q. I believe you were the first President of the Insurance Exchange of Richmond, Incorporated, when it became an incorporated organization, were you not?

A. Yes, sir.

Q. It has been rather a mystery by your testimony as to what has caused the fire companies to procure Virginia countersignatures on fire policies, covering in Virginia though produced outside of Virginia, from commission agents. Having reference to the existence of this exchange and also to the existence of its constitution and by-laws and having reference to the Southeastern Underwriters Association and its constitution and by-laws, are you enabled to throw any light for the Court on the reason why the fire companies follow that practice?

A. The only explanation I would have of it is that it has demonstrated to the companies that it was the best way to handle their business.

[fol. 534] Q. And that demonstration was made two or three generations ago, wasn't it?

A. I think it has been continuously made ever since it started, up to the present minute.

Q. But that practice has existed for several generations of insurance agents?

A. I understand it has. I don't know just when it started.

Q. Can't you say here on this record whether the rules and regulations of the Board from time immemorial here in Richmond and the rules and regulations of the Southeastern Underwriters Association since it was organized have required those countersignatures to be given by these commission agents?

A. I am not familiar with the requirements of the Southeastern Underwriters Association.

Q. Limit yourself then to the requirements of this local Board?

A. But I would have to introduce into the testimony the by-laws and constitution of the Insurance Exchange of Richmond to answer you fully. It has been such an immemorial practice that I don't know that our by-laws have any very distinct bearing on it.

Q. You know your by-laws have a bearing on whether you shall represent Board companies or non-Board companies, don't you?

A. Yes, they require us to represent Board companies.

Q. What is the difference between a Board fire company and a non-Board fire company?

[fol. 535] A. My opinion is that a Board company is a member in full standing of what is known as the Southeastern Tariff Association which is composed of about 200 stock fire insurance companies, both American and foreign, and they agree to live up to the regulations of that Board. A non-Board company is one that is not a member of said Association, and, therefore, is not expected to live up to their rules and regulations.

Q. Having reference to the thirty or forty or fifty percent of the leading stock fire insurance companies of the country, is it fair to say, generally speaking, that substantially all of them are Board companies?

A. Yes, I think the great majority of companies operating in Virginia are members of the Southeastern Underwriters Association.

Q. Coming down to your local Board here, this thing of which you were President, please say to what extent the fire agents in Richmond are members of that organization?

A. I have no up-to-date figures but I think about two-thirds of the agents domiciled in Richmond as insurance agents are members of our local exchange. A great number of non-members are men with other occupations who have insurance as simply a side line.

Q. Substantially all of the people who are whole time insurance people are in your Board?

A. Yes.

Q. Please explain to the Court whether your local Board has what is known as a non-intercourse rule?

A. Yes, sir, they have.

[fol. 536] Q. Tell the Court what is the non-intercourse rule?

A. Well, simply the non-intercourse rule prevents members of the insurance exchange of Richmond from transacting fire insurance and other lines of business with insurance agents who are not members of the local insurance exchange.

Q. Under that rule, in its full implication, is it not also prohibited to members of your local Board that they represent any non-Board company?

A. You mean a non-Board company is any company not a member of the Southeastern Underwriters Association?

A. Yes.

A. Yes, sir, I think we do prohibit handling of business with such companies.

Q. Is it not also a fact that under the regulations of this

local Board in Richmond no branch office may accept any business within the territory of Richmond and vicinity but, instead, it is all required to go to the local agent of the fire company maintaining the branch office?

A. Yes, with the exception of two branch offices here, the Travelers and the Ætna, who have solicitors in their own offices to whom they can give any business they desire.

Q. You speak of those gentlemen as solicitors. In fact, they are what is known as office agents under the national rule, aren't they?

A. Correct.

Q. And they are just as much a Virginia resident agent as you are?

[fol. 537] A. Yes.

Q. So that there is no exception to the rule in favor of Ætna and Travelers or anybody else that a branch office may not accept business, is there? That doesn't constitute an exception, does it?

A. When you say the branch office cannot, the branch office as such cannot, but these so-called branch office agents can accept business.

Q. And they are Virginia resident commission agents just like you?

A. They are but with a different standing as far as the insurance business is concerned. They are what we call solicitors.

Q. Who are "we"?

A. The insurance exchange.

Q. Do you mean to tell me that Mr. H. E. Woodward is what is fairly known as a solicitor or Mr. Maurice Tyler?

A. Yes, sir, they are known as solicitors and not agents of the Travelers Fire Insurance Company because our rules require that a company can have only one agent and I happen to be it and the exception is made that branch offices of the Ætna and the Travelers can also write fire insurance for those companies through their branch office. I hope I have made the distinction clear.

Q. Am I right that no member of your local Board is permitted under your by-laws to receive less than ten percent [fol. 538] for his own benefit when countersigning or otherwise associated in connection with a risk either with another Virginia agent or a non-resident agent.

A. Yes, that is the rule of the Richmond Insurance Exchange.

Q. Let me ask you this question: Does the Norfolk insurance community have a local Board in Norfolk?

A. Yes, sir.

Q. Under their rules their agents are regulated substantially as the Richmond agents are by the rules of the Richmond Exchange, aren't they?

A. When you say substantially, I would say that if you mean in most parts I would agree, yes, but my understanding, while I have never read the Norfolk regulations and by-laws, is that they have several privileges that we do not give our members.

Q. One of their requirements is that they have got to get this same ten percent on fire business that your rules require you to get, isn't it?

A. I think so but I don't know that.

Q. Don't you know that if you produce any fire business in Richmond you have to send it to Norfolk and pay somebody there ten percent to countersign it?

A. Yes, sir, and they are satisfied with it but whether it is a rule of their Association or not, I don't know.

Q. You know over the country that these Boards pretty much all have that rule, don't you?

A. Yes, I think they do.

[fol. 539] Q. To further bring this matter before the Court in its true light then, would it be fair for me to say that what are known as the Board agents throughout Virginia and elsewhere in the country must exact that ten percent on penalty of being thrown out of their local Board if they don't exact it?

A. Well, the penalties are right various under our by-laws.

Q. I don't mean that there isn't a difference between first offense and second offense and that they wouldn't possibly give you a criticism or censure first before they expel you, but I am asking you to inform the Court if, as a practical matter, it is not generally understood that if a man goes along habitually taking less than ten percent for countersigning this fire busines-, covering in his locality, he is going to get thrown out of the Board and is going to get ostracized? Isn't that a fair statement, generally speaking?

A. I don't think it is quite a full and fair statement because I understand in several points in Virginia men who are members do accept less commission.

Q. Who are you talking about? Mr. Charlie Lunsford?

A. Yes.

Q. Are you talking about Mr. John Yancey?

A. I don't know about Yancey.

Q. Is Mr. Charlie Lunsford a member of a Board that requires him to receive ten per cent and retain it?

[fol. 540] A. I am not sure about that because again I never have read the rules of the Roanoke Association.

Q. It is possible that the rules of the Roanoke Association might give him a right to retain only seven and one-half percent?

A. Perfectly possible.

Q. It is possible that Mr. Yancey in Harrisonburg isn't a member of any local Board?

A. Perfectly possible.

Q. Do you not also think it would be fair to say that the members of this Southeastern Underwriters Association, that is to say, the Board companies, are obligated to cooperate with these local Boards, such as the Richmond and Norfolk ones, and to conform to their rules and regulations? Isn't that your understanding?

A. Yes, I think they fairly approve of our rules in that respect.

Q. But it is your general understanding that any member of that Underwriters Association is supposed to conform to the requirements of these local Board rules, is it not?

A. Yes, sir, and I think they have found it much to their advantage to do so.

Q. Isn't it further true that a member agent of one of these local Boards couldn't continue to represent a company which had been formally declared by the Board not to conform to these rules we are talking about?

[fol. 541] A. I don't know, but my general impression is that those rules have been broken very often by companies but I don't make any accusation because I have no real facts on which to base such a statement which would be probably a serious accusation. The companies don't have anything to do with our rules and regulations. We are independent business men and we conduct the business of our exchange, in our own judgment, without reference to the companies.

Q. Am I right in my understanding that as far as the fire insurance business goes every benefit which you think this law is going to give anybody in respect of the casualty and

surety business is already being received without the benefit of this law?

A. No, I think that the benefits of this law will also redound to the fire insurance business by the additional care and attention and service the agents can give and especially under the resolution we have now adopted in our Association which will take in fire as well as casualty and surety. In other words, the agent will appreciate that his services are more valuable and that he will be compensated for a larger degree of service.

Q. I don't think we altogether understand each other. Let me put it this way: So far as the fire insurance business is concerned and as far as your knowledge extends, have not the Board companies, prior to the enactment of this law, been doing all that this law requires of them?

A. The Board companies as such, you mean?

[fol. 542] Q. Yes.

A. Yes, I think the Board companies have been doing everything that this law requires.

Q. Am I right in thinking that this law has, as its prime purpose to make the casualty and surety companies conform to what the fire companies have heretofore been doing under their rules and regulations and the rules and regulations of these local Boards?

A. I think it amounts to practically the same thing.

Q. Why is it that instead of getting a law to make these companies do that, you don't just make agreements with them to do it?

A. Well, I would say, in my humble judgment, the casualty companies, for some reason unknown to me, object to it and I don't know what brought about the adoption of the present methods of the fire companies in handling their business covering in Virginia and written by non-residents. I am not familiar with what led up to that agreement on the part of the companies and, therefore, I cannot tell you why it is necessary to have a law to conform all lines of insurance to the same regulations.

Q. Let me suggest that this fire custom grew up at a time when the fire companies did not have well developed, salaried, field plants in the various localities and, in consequence, were glad to avail themselves of the services of commission agents in connection with coverage in a given locality, produced outside of that locality. Does that seem [fol. 543] to you a plausible theory why in the older fire

insurance business this custom sprang up many years ago but did not come into the casualty and surety business in comparatively recent years when that business sprang up?

A. There might be some reasonableness in your assumption but if the fire companies found that the rules under which they operate were burdensome, they are the people that can change them because we agents are subject to cancellation of our contracts at any time and if they were not thoroughly satisfied with the division of commissions which has become an established custom, I am dead sure they would change it.

Q. But they would have to overcome the inertia of the existence of the rule and custom and overcome the friction of upsetting what had been in effect for forty or fifty or sixty years to do that, wouldn't they?

A. I think they would but we would have no recourse because we would have no companies to represent.

Q. You rather left the impression on me in your testimony in chief that in the fire business when you countersign policies you do not ordinarily prepare the policies, if the business has been produced by a non-resident agent or broker and covers in Virginia. Did you mean to leave that impression on me, speaking with particular reference to the Travelers Fire Insurance Company?

A. I would say, Mr. Christian, that we prepare about half of them and the other half are prepared by the company [fol. 544] and we check up, as I said, and report anything that we feel should be changed in the coverage.

Q. Is the other half the I. U. B, risks and F. I. A. risks that you don't prepare?

A. Yes, sir, we do not prepare those.

Q. So all those that you ever have any record of or keep any record of you have prepared yourself as a part of getting that ten percent, haven't you?

A. I said that about fifty percent would we prepare and about fifty percent the company prepared.

Q. And those you don't prepare you don't have any record of?

A. Oh, yes, we do. They send us a full copy of the policy they prepare and we keep it as a permanent record.

Q. I thought you said in the I. U. B. and F. I. A. cases you didn't get copies?

A. Oh, no, I did n't understand you referred to F. I. A. and I. U. B.

Q. Do you get copies of those?

A. No, sir, we do not.

Q. Do you say that leaving out entirely the I. U. B. and F. I. A. policies that you only prepare one-half of the other policies which you countersign and which are produced by somebody else outside of the state and come here for countersignature by you?

A. I would say that is approximately correct, that about half of them we write the whole policy and about half the [fol. 545] company sends us the policy with a copy for our records.

Q. And you say that is true as to the Travelers Fire Insurance policies?

A. Yes, I would judge so, of all companies in my office.

Q. I am not talking about all; I am talking about the Travelers Fire Insurance Company of which Mr. John A. Gibson upstairs is the branch manager?

A. Yes, sir.

Q. When you say that some of them come to you already prepared instead of you preparing them, don't you mean that the descriptive riders, especially of these big assureds, are printed outside of the state by the broker or the company, or whoever does do it, and that comes to you or do you mean that that is already pasted on the policy form and all the blanks in the policy form filled in before it comes to you?

A. Usually every bit of the policy is prepared, including those endorsements and forms and we sign them.

Q. You say that is so in as much as fifty percent of the cases?

A. I would say so, as a rough guess. That is a guess with no checking of my records.

Q. So to get this ten percent in the fire business, half the time you do have to, write the policy and the other half of the time, leaving out the I. U. B. and F. I. A., you don't have to write the policy; is that right?

A. I would say that was approximately correct.

Q. How many of these cases out of the whole number are I. U. B. and F. I. A. cases—twenty percent or ten percent or how much?

[fol. 546]. A. You mean in number or in volume of premiums?

Q. You can state it both ways.

A. I would say that the F. I. A. and I. U. B. contracts in

my particular office wouldn't be more than one in ten in the number of policies and probably twenty percent in the volume of premiums and that is another approximation because I haven't checked it up and am simply going by memory.

By Mr. Staples:

Q. I wish you would state what F. I. A. and I. U. B. mean.

A. The letters I. U. B. refer to the Interstate Underwriters Bureau and the letters F. I. A. to the Factory Insurance Association which are designed by the fire insurance companies to cover special risks usually located in many states.

By Mr. Christian:

Q. After you have written an insurance contract for the Travelers and you have delivered it and collect the premium and turn over to the company the balance of the premium left after deducting your commission, have you earned that commission that the company has paid you as far as your contract with it is concerned?

A. He has not because he agrees to refund to the company such portion of his commission as might be applicable to any return premium so that if the company cancels the risk for any reason they deem sufficient, the agent must refund the commission on the unearned portion of the premium. Therefore it follows that the agent has not earned his commission until the expiration of the policy.

[fol. 547] Q. Under the provisions of the contract, however, the agent has done all that he is required by the contract to do in order to earn either the commission deducted from the gross premium or such part of that commission as is not required to be restored because of a cancellation?

A. Yes, I would say that he has earned that portion of the commission which might apply from sday to day for the earned premium but I did not conceive that his entire duty under the policy is fulfilled when he delivers the policy and pays the premium to the company. His work in most instances has just begun.

Q. For a long number of years I have been getting annually from your agency a renewal certificate of a fidelity bond issued by the Fidelity and Casualty Company of New York on which you are one of the local agents, and I pay you

$12.50 each year and each year you send me the bill with the renewal certificate and in that bond the company guarantees to indemnity my organization, of which I am representative, from loss by virtue of the dishonesty of a certain employee of the corporation. In this supposititious case I never have had, as far as I can recall, any personal contact with any member of your organization. The only thing that has happened between us at all is each year you send me the renewal certificate and the bill for $12.50 and I approve the bill and tell the Treasurer to pay it and that is all that has taken place between us over this long period of years. I want you to explain to me in that case of what your services consist?

[fol. 548] A. Mr. Christian, you have cited a form of insurance that I am frank to say requires probably less service than any branch of the insurance business. However, service is rendered even under that $12.50 premium bond. We see that you are covered and the renewal delivered, regardless of whether you pay the premium or not. We pay the premium and protect you and in many cases don't get it at all and in many cases we don't get it for sixty days or ninety days. We see that your interests are protected and I deem that a service. We don't even trouble you with a visit to take up your valuable time.

Q. Suppose you moved up to Hot Springs and established yourself at the Homestead. Have I a legal right to expect you to come back here and attend to me?

A. Yes, sir, I think so.

Q. Where do I get that legal right. What has passed between you and me, consisting only of your delivery of that original bond and your annual delivery of a renewal certificate to me, to give me that legal right against you?

A. I think custom has established it. I can't go so far as to tell you that there is a legally enforceable contract to make me come back from Hot Springs to render some service under a bond, but I think it is implied that I will render you the service and I don't know but what I would go as far as to say I would be subject to some legal claim. I so consider it, Mr. Christian, in my profession.

Q. But you never told me anything in the way of an agreement to serve me, did you?

[fol. 549] A. I don't know. I don't remember when that bond was issued and I don't think I personally wrote it but

most policies that we write we either tell the insured, or imply it very strongly, that we are subject to any call for any service and sometimes it is right remote service and we feel we are bound to render it.

Q. Isn't that simply because you are intending to stay in the insurance business and want to expand your business and you want to get the renewal of the bond each year?

A. It is partially true. It is a selfish motive, I admit, to some extent but I object very strenuously to it being indicated that is purely selfish. I reiterate that we feel that we are professional men and have the same duty to a client that a doctor has to his patient.

Q. But the only contract I have sought, Mr. Tabb, or purported to have paid for in my supposititious case, is the contract of the Fidelity and Casualty Company that if this employee is dishonorable and his dishonor damages me it will indemnify me. That is the only contract I have bought, isn't it?

A. Well, I think there are certain implications there that you would feel, if you wanted to consult me about the employee and say, "I have got my doubts about him and what would you advise," and so forth, and we have that come up under bonds. I would feel obligated to give you that advice and service.

Q. I am rather frequently brought into transactions where I am required to procure what are known as removal bonds [fol. 550] in connection with the removal of suits from the State to the Federal Courts. I am not aware of any service I get in connection with such bonds after the agent has put his name on the bond. Can you explain to me where the service arises there other than in connection with the credit he gave me or my client for the payment of the premium?

A. Well, if I personally issued that bond I would feel under the same obligation for service that I would under your individual bond, but I must say that you are asking me questions about the surety business with which I am least familiar. I don't pose as a great writer of fidelity and surety business and my office may be at entire variance with the usual practice in that business. I am giving you what we do under all contracts in a general way.

A. There are some kinds of bonds that I am frank to say involve little or no service but they are the exception and do not prove the rule.

Q. I frequently have occasion to procure, in connection with the law practice, the signing of administrators' and executors' bonds and receivers' bonds and bonds of trustees in bankruptcy and of trustees in other matters than bankruptcy, attachment bonds, supersedeas bonds and after the transaction of the bond having been delivered and filed and becoming effective, I have never been made aware that the agent who signed the bond and got the commission had anything more to do with me. My object has been attained when I got him to put up that bond and I want you to explain to me where that service comes in?

[fol. 551] A. Well, there are degrees of service, some very little and some very great, and there is no way in which I can testify how much service would be required under any form of bond.

Q. Take one of those cases; take a supersedeas bond. Do you know what that is?

A. Generally, yes.

Q. What does the man who takes that bond and pays the man the premium have to do with what happens after that bond is filed in the Supreme Court of Appeals and has become effective? Isn't he done? I should say in nine cases out of ten he is and I don't know under what conditions he might not be, but I can imagine there might be cases that he would be called on but I don't think it is usual and I don't think it is probable.

Q. Suppose I have levied an attachment on somebody's goods and I call on you to give me a forthcoming bond in order to let me get my goods down. You give the bond and I get the goods down and take them and sell them. What service are you going to perform for me after I get that bond and take the goods down and sell them?

A. I think the service is very little that I would perform.

Q. It would really be more accurate to say there is no opportunity for service in the case of these various bonds?

A. That might be true too.

[fol. 552] Q. Within the past few days I had occasion to procure the issuance by a casualty and surety company of what is known as a lost instrument bond. The obligee of this bond was a Baltimore, Maryland, concern and I thought it was better that the bond be drawn in Baltimore so as to have its terms precisely what the obligee wanted. So I did get an agent of the obligee to arrange to have an application for the bond sent down here from Baltimore to me

and I had my person sign the application and mail it back up there with the premium. On the strength of having done that I am to get a duplicate debenture bond issued to replace the one that my person has lost. Having gotten that debenture bond, my person, I think, intends to negotiate the bond and get the purchase price and the transaction will be closed as far as my person is concerned. I want you to state what service I am going to get for my person from the agent who gets the commission on that bond which will be performed at a time after the effective date of the bond?

A. In answer to the foregoing question, I would say that I do not pose as an expert on various forms of bonds. My experience, however, over many years in writing bonds puts them in the same category as all other insurance contracts and service of the agent is often requested under every form of bond. I recently had a case somewhat similar to the form of bond mentioned by Mr. Christian where a large bond was [fol. 553] given by me to cover a lost instrument. This instrument was found after the death of the owner of the instrument which the bond was issued to cover and the agent was called in by the administrator to negotiate with the company for a basis of return premium and quite a lot of service was in order. I would say that, in my opinion, many claims under all forms of bonds require the service of the agent.

A. I cited a similar case which I handled and service was rendered many months after the issue of the bond. However, I will endeavor to further answer the question by stating that such a bond, in my judgment, might develop into a controversy or question as to coverage if a claim arose and the agent would be called on to act in behalf of the person for whose benefit the bond was issued.

By Mr. Christian:

Q. I want to ask if in the case in question the bond was applied for in January, 1937, and if your service consisted of having a talk with Mr. Watt on the morning of December 6, 1938, and of writing a letter to the company under date of December 7, 1938, asking it to make a premium refund and receiving and reading the letter from the company dated December 8, 1938, refusing to make a premium refund? Is that a fair statement of your service in that matter?

A. I would say it was.

Q. Continuing to discuss your bond case rather than mine, that is to say, the one where you tried to get the [fol. 554] premium back, would the principal in such a bond ordinarily call on the producing agent if he wanted to try to get his premium back or would he, instead of calling on the producing agent, call upon some other agent as a countersigning agent that he didn't know?

A. I think much would depend on the locale of the producing agent and the countersigning agent. I think if he called on the producing agent that agent would, in turn, call on the countersigning agent for assistance in rendering the service desired by the policyholder. My illustration of the bond issued by me and my efforts to secure a return premium illustrated the fact that we are called on for various classes of service, some of which are substantial and some of which necessarily do not get results, but it shows that an agent issuing a surety bond or any class of bond stands ready and is frequently called on for various services.

Q. Is it not a fact that this particular bond was delivered to an obligee in New York?

A. My recollection is the bond was delivered in Richmond to the person who owned the stock and I presume he delivered it to the Tobacco Company but our service did not concern the Tobacco Company in any way as they were not interested in any way in his request for our service.

Q. Where was the office of the Tobacco Company to which the bond was delivered?

[fol. 555] A. I don't actually know what became of the bond but the American Tobacco Company office, of course, is in New York.

Q. Assuming that in that transaction there was not only concerned the producing agent, Mr. Tabb, but also a countersigning agent in New York, do I understand from your answer to my question as to whether the producing agent would not be the one to perform the service in the course of which you indicated that it might be the producing agent or it might be the countersigning agent, that you think there is a reasonable possibility if there had been a countersigning agent in New York getting fifty percent of that commission that your friend and my friend, Mr. Preston Watt, whose office was within fifty yards of this building and within three hundred yards of your office, might in some circumstances have called on that countersigning agent in

New York to get back his premium instead of calling on you to do it? Is that what you want the Court to believe?

A. We did not construe this bond as a New York coverage but strictly as a Richmond, Virginia, transaction. I think any insured would call on both a countersigning agent and the agent of record for assistance in any matter concerned under the bond if he used all the sources of service available.

Q. I am coming back to ask you to further inform the Court on the point of whether you think there is a reasonable [fol. 556] possibility that if in that case there had been a countersigning agent Mr. Watt would have called on that man rather than you, but I notice you use the distinctive terms there—"Agent of record" and "countersigning agent"—I suppose drawing a distinction between yourself and the New York countersigner in the case we are talking about. Do you call yourself merely an agent of record in this transaction with Mr. Watt?

A. No sir, we were the entire and exclusive agent of record and were the only agents concerned in the transaction.

Q. What constitutes a man as the agent of record? That is terminology that has not thus far intruded itself into this case?

A. An agent of record is the agent responsible to the insurance company for the issue of the policy or bond.

Q. And how is the identity of that agent ascertained? By what fact?

A. By the fact that he produces the business and secures the policy or issues it himself and the term "agent of record" is simply one used in our business to designate the man who produces the business.

Q. That is all I am trying to get at, is whether you refer to the agent of record as the equivalent of the term that has heretofore been used—"producing agent"—and I understand you do?

A. Yes.

[fol. 557] Q. Not speaking in generalities but still talking about this bond case with Mr. Watt's office on the next corner and your office two corners below here, I understand you would have the Court believe that it would be reasonable to expect Mr. Watt, who had given that business to you, to call on the New York countersigner of the bond, if there had been one, rather than on you to help him get back

that premium if he thought he was entitled to get it back. Please state is that understanding correct that you want the Court to believe as the reasonable expectation of that?

A. I want the Court to understand that I think any man would be exceedingly lax in his duty if he did not try through both sources to secure action in behalf of his client.

Q. Is it a reasonable expectation that he would write to the New York countersigning agent before he called on you?

A. He might do it but I think that he would be unusual if he didn't call on them both together or certainly if one failed to call on the other because they are jointly interested and expect to render every possible service that their connection with the transaction would make possible.

Q. Whom do you think he would reasonably call on first, you or the New York countersigner?

A. I think he would reasonably call on the man to whom he had given the business as being under the greater obligation to him, but that wouldn't estop him from taking it up [fol. 558] with the countersigning agent and also with the company itself.

Q. Did you ever hear of Marsh & McLennan?

A. Yes, sir, I know them well.

Q. Who are they?

A. Possibly the largest and leading insurance brokerage corporation of the United States, located in New York City, with branch offices in many other cities.

Q. I will ask you do you not know that these big brokers around the country do maintain employees in the various localities where they are interested in coverage to perform inspection service, supplemental to the inspection service of the companies?

A. I don't think they do. I think they maintain an engineering department in New York and possibly in Chicago but I never heard of any broker maintaining any engineering service in Richmond, Virginia.

Q. We are discussing whether Marsh & McLennan performs, through its employees, inspection services in Virginia for its customers?

A. I think they would under certain conditions but from long and much experience with that particular brokerage firm, I know they look to me to perform that service on risks in which I am connected with them in the State of Virginia.

Q. Fire risks?

A. All forms of risks.

[fol. 559] Q. Are those fire risks in which you are connected with them or are you connected with them in other risks?

A. All forms of risks.

Q. I am asking you as a matter of fact are you connected with them in other risks?

A. Yes, sir, I stated all forms of insurance.

Q. Including casualty and surety?

A. Yes, sir. I don't know about surety. I am doubtful as to whether we handle any surety business for them.

Q. Is it business that is produced exclusively outside of the State of Virginia and by Marsh & McLennan alone that you are associated with them or is it business that is jointly produced by you and them and partly in Virginia?

A. I think we have business of both kinds with them.

Q. Casualty business produced exclusively outside of the State of Virginia in which they have associated you with them?

A. Some of it is produced in Virginia and some of it produced outside of Virginia.

Q. I asked you was any of it produced exclusively outside of Virginia by them?

A. Yes, sir.

Q. And it is casualty business?

A. Yes, sir, as well as fire.

Q. I am not asking you about fire so that is not responsive to my question. Did your relationship to which you have referred in your last answer of association with them arise before June 21, 1938, in respect of this particular business we are talking about?

[fol. 560] A. Yes, sir.

Q. Was it at their instance or at the instance of the assured that you were associated with them in that particular business about which we are talking?

A. Both, both classes.

Q. And they paid you fifty per cent of the commission?

A. The allowance of commission has varied. It is not always a fixed——

Q. Have they ever paid you as much as fifty per cent of the commission in a case where they voluntarily associated you in casualty business before this Act became effective?

A. They don't pay me any commission. I pay them and in some cases fifty per cent.

Q. You know that Marsh & McLennan are brokers, don't you?

A. Yes, sir.

Q. And you know that a broker doesn't get a general agent's commission, don't you, as a rule?

A. I don't know it as a fact because common report is that New York brokers get many favors, either above board or below board, that we agents in the territory have no means of knowing.

Q. Are you familiar with what are known as bankers' blanket bonds?

A. Yes, sir, to some extent.

Q. Do you know what is meant by Lloyds Associations?

A. If you mean Lloyds of London, I am fairly familiar with what that means.

Q. Is that an association admitted to Virginia?

[fol. 561] A. No, sir.

Q. Does it carry the coverage of any bankers' blanket bonds covering in Virginia, as far as you know?

A. Not to my actual knowledge but I understand that is the case.

Q. Does that concern have agents in Virginia?

A. I think not.

Q. Please state in the case of that important line of coverage what service is performed to the obligee by an agent or broker, not the producer?

A. I don't quite understand what the agent or broker would have to do with it. I am not quite clear on what you mean by that.

Q. The proposition is this: I understand from your answers to my questions that these so-called Lloyds of London people carry the risk which is covered by bankers' blanket bonds covering in Virginia, notwithstanding that this organization is not admitted to Virginia and has no agents in Virginia. On that premise I ask you what service is required to be furnished to the obligee in those bonds which is not capable of being performed by the non-resident producer of the bonds and I want you to tell the court that, if you will.

A. In my experience in trying to compete with Lloyds of London on bankers' blanket bonds, it has been rather freely admitted by the banks concerned that they are willing to do

without service in order to save the difference in the premium.

Q. I have had some contact with these bankers' blanket bonds and my recollection, which I state subject to correc-
[fol. 562] tion by you, is that they usually cover dishonesty of employees and the losses therefrom, and also cover cases where no dishonesty can be established, such as mysterious disappearance of securities. Having reference to that sort of bond, will you tell me what the service is that is performed by an agent in connection with that bond during the period of its life before any dishonesty occurs and before any securities are lost?

A. Again I repeat that I have issued so few bonds of this nature that I am not competent to say what service is required or might be required.

Q. Is the reason you have issued so few that you can't meet the competition of Lloyds of London?

A. Yes, sir, I would say that is absolutely the reason.

Q. And you hold yourself ready to issue one and service it for anybody who would give you one, don't you?

A. Not in Lloyds but in one of my own companies.

Q. That is what I mean, whether you know much about it or little about it.

A. I didn't say I knew little about it. I said that I don't know from actual practice how much service might be given before a claim arises or before some other contingency arises. If there is no complication or claim or anything under any insurance policy, I don't know what service the agent would render until such an occurrence did arise.

Q. I want to talk to you now about floater jewelry policies. Do I call that by a name that makes you know what I am talking about?

[fol. 563] A. There are two forms of coverage on jewelry and one is known as "all risks," to which I think you refer, and the other is risks outside of the domicile of the insured.

Q. What I want to get at is this: Supposititiously I have been one of these well-to-do people who has carried one of these policies for a good many years and I have a transaction every year with the agent in that he sends me a renewal policy and I send him the premium. I want to know what kind of service he ought to be giving me and, if you were my agent, I would be getting on my wife's fur coats and rings, and so on, that I am not getting now?

A. I don't know what service you are getting or not get-

ting but before we renew those policies in my office we either have a new appraisal made, because the values change from year to year, so that we will be prepared to pay your loss when it occurs and not question the amount of the loss, or——

Q. You say if you had been fortunate enough to be my agent in that transaction you would make me get the fur coats and rings each year and submit them to your appraisal?

A. No, sir, we don't appraise them. We have disinterested expert furriers to appraise furs and expert jewelers to appraise jewelry.

Q. And you claim that you would make me do that every year if you were carrying that risk for me?

A. No. I would ask you if you didn't think it would be wise to do it and would recommend that you do it because the value of diamonds, for instance, fluctuates widely.

Q. And you would get a new renewal commission every time that happened, would you?

[fol. 564] A. Yes, that form of policy is deemed a new policy each year.

Q. So you would be doing that as a part of service to get the renewal commission, wouldn't you?

A. Of course.

Q. That is what most of this service is, isn't it?

A. No, sir, it is to look after your interest and company's interest and see that the insurance is properly written and to stand ready to see that you receive a proper adjustment when you have a loss.

Q. You say it is a part of the producer's obligation to do that?

A. It is an implied obligation and certainly, if he is on his job, he renders that service without any request on the part of the policyholder.

Q. I have some knowledge also—and there is no doubt you have—of burglary policies.

Q. I have had this policy for some ten or fifteen years, Mr. Tabb, and I haven't had a loss. I want to know would you have been giving me a lot of service during that time, if you had been my agent, and, if you would, what would it consist of?

A. Well, of course, it is perfectly conceivable that this form of policy can involve a very minimum amount of serv-

ice but in renewing such policies in my office we usually call the attention of the insured to the advance in values and the accretions of a household which should be covered more adequately. I think this is service but it sometimes doesn't result in any change in the policy.

[fol. 565] Q. And if that service results in my taking the policy in a larger amount, then you get a larger commission than you would have gotten if I had kept the policy in the same amount, wouldn't you?

A. Certainly, and that is our business.

A. Let us go on to the health and accident business and getting down again to treat my case as a supposititious one, I have a policy with the Travelers on which I pay a premium of $200 per year and I suppose you know what kind of a policy that is. It is a health and accident policy and I reckon it is a fairly good sized one as those policies go, though I don't know. I carry another one on my son, an accident policy, which a Travelers' agent brokers with the Aetna.

Q. What would you have been doing for me all of these years when no claims have occurred to make those two contracts of greater value to me if you had been the producing agent of the two contracts?

A. There might be improvements in coverage coming out since the date of your policy, such as hospital reimbursements which probably might be added, and various conditions might arise that would justify the agent visiting you and ascertaining that there were changes in your conditions which would justify a change of the policy.

Q. Do you mean by that that he would come to me and tell me I didn't need that accident insurance and better not renew it?

A. There are conditions under which we have done that very thing but I can't answer your supposition unless I [fol. 566] go into imaginary field which would take me a long time to cover the ground.

Q. But ordinarily you favor any man who can pay a premium, without undue hardship on himself, protecting himself by health and accident insurance, don't you?

A. Based on his income and other conditions which sometimes change.

Q. You mean you might come up here and get me to tell you what my income is and discuss with me whether I could

really afford to pay this $200 a year? Is that the service you would give me?

A. Not a question of affording it so much, Mr. Christian, as not covering you for more than you earn. Those cases are not very numerous because we hope the man knows something about what he needs.

Q. You could get some information about whether I could afford to carry it from the fact that I might have difficulty in paying the premium notes when they fall due, couldn't you?

A. Well, that doesn't absolutely fix the insurable value of a man's time as covered by an accident and health policy. We also, as a matter of service, renew his policy and send it to him before he pays the premium. You might be out of the city for a week or two, covering the date of your expiration, and if we didn't cover you you might have an accident during that interim and lose the entire coverage. I deem this a very important service on the part of a reputable agent.

[fol. 567] Q. Keeping on with these cases, you are familiar with plate glass policies, aren't you?

A. Yes, sir.

Q. What service ought this supposititious person to be getting on these plate glass policies through the year and, when no loss occurs, the glass just stays in the window?

A. Well, of course, the agent has to see that the glass is measured and the rate applied but on this particular class of insurance there is a very small amount of service expected.

Q. About this public liability insurance line, are you familiar with that?

A. Yes, sir, I think I may fairly claim to have issued almost the first public liability coverage in Virginia in many lines.

Q. Will you say what sort of service, in the absence of claims arising or appearing to be impending, the owner of a theatre or merchandise store or hotel or bank gets from the producing agent of its public liability contract?

A. The agent tries to keep posted as to developments and extensions of the plant or hotel and it is often necessary to explain the necessity for extended coverages such as products liability and, in the case of an hotel, there is possible liability for their doorman handling cars of guests and, in the case of stores which take on the installation of mechanical de-

vices, the coverage has to be extended to take in that additional hazard. The ramifications of the public liability business are so great and changeable that an agent has opportunity to render very efficient service to the policyholder and to his company.

[fol. 568] Q. You spoke about the additional coverage that would be needed in the case of an extension of the plant. Do you mean if you add a wing on to the hotel or deepen the depth of the banking office?

A. Yes, and also changes in their business operations.

Q. You mean to say that if the bank has a public liability policy and it adds twenty feet to the depth of the bank that it won't have coverage as to what took place in that additional twenty feet unless it pays an additional premium and gets the policy changed?

A. Bank insurance is based on area and frontage of the premises and, therefore, if additional room is added the policy should be endorsed to take in that additional area and frontage, if there be any.

Q. And until that is done there would not be any liability for what took place in the additional area?

A. I don't think any reputable company would deny liability if an insured or agent overlooked endorsing the policy but the policy contract might be such that it could be strictly constructed to avoid liability if an accident occurred on the additional premises.

Q. And you say that is so of the Travelers' public liability contract?

A. Yes.

Q. You spoke of that as additional coverage. Would there be an additional premium and an additional commission when that additional coverage was placed?

[fol. 569] A. If the amount of premium amounted to a dollar, additional premium would be charged but if less than a dollar no additional would be charged because it wouldn't pay to put it through the books.

Q. What about products liability that you said you might call attention to the fact that an extension of coverage was needed to include products? Would there be an additional premium if you got the man to take that additional policy?

A. Yes, sir.

Q. You spoke about these doormen at the hotels. Do you mean that under the Travelers' public liability policy it

needs a special rider to cover public liability on account of acts of the doorman?

A. Involving a car, yes, sir.

Q. There is an additional premium for that?

A. Usually, yes, sir.

Q. And there would therefore usually be an additional commission that the agent would get?

A. Certainly, but that wouldn't lessen the service to the assured as the premium charge would be a very small item as compared to the possibility of a loss.

Q. But at least you would be getting a commission for writing that new policy?

A. Certainly.

Q. If I were a department store man and had a public liability policy covering my premises, but did not have one covering my products, and the company had paid you the commission as the producing agent on the policy covering my premises and you came up there and pointed out to me [fol. 570] that I ought to get another policy covering my products, and I did do it and the company paid you a commission for doing that, is my understanding correct that you think the work you did in connection with that products policy is a part of service on my premises policy?

A. Yes, because usually there is an extension of that coverage and it is all involved in the general coverage known as public liability.

Q. Tell me what element there is in the relationship between you and the owner of that department store who places with you, as the producing agent, the premises policy which would make you liable in law for a default in service if a suit should afterwards be brought against the owner on a cause of action based on products liability and you had not been up there and tried to get him to take out that products policy? Are you, according to your conception, in default to him because you didn't go up there and tell him he ought to have a products policy and, therefore, has he got a legal cause of action against you to indemnify him against the amount of the judgment that the plaintiff in that suit on the products liability gets against him?

A. I feel quite confident there would be no legal liability on the agent but I think he would feel very badly about his failure to properly go over the public liability policy and point out where it should be extended.

Q. In the same way, if I were running a department store and all I had in the way of casualty insurance was a public liability policy, if I got sued for anything in the way of a [fol. 571] casualty hazard and I didn't have a policy on it, you would feel that you had neglected an opportunity to make some money for yourself and you would also feel you had neglected an opportunity to help me by not bringing that up with me and selling it to me, wouldn't you?

A. Well, the agent handling a public liability coverage is supposed to cover the whole ground such as elevators, boilers, and everything that can produce a public liability claim. It is all wrapped up in duty to his client and to segregate it into different policy credits is not practical nor is it a part of my theory of service.

Q. Aren't there a great many people, however, Mr. Tabb, and also corporations that divide their casualty and surety business among several agents and brokers in whom they have confidence rather than giving it all to one and letting that person be a sort of general insurance counsel?

A. In the case of large assureds they usually have one broker or, in this state, an agent. Of course, they may divide their business among agents but they don't divide public liability, according to usual practice.

Q. Why is it they usually have one who is kind of a general insurance counsel who would, therefore, feel guilty if there was any defect in the protection, instead of having several?

A. Well, it simplifies their business and they like advice of someone that they give big business to on the theory that he can afford to call on them more frequently and liberally, [fol. 572] and an agent writing public liability insurance is supposed to be quite a high type of agent because it takes some knowledge of law and some knowledge of business conditions and many things that make this service I am talking about appreciated by owners of property and substantial business people.

Q. But you are getting a little bit away from my question. In a community like Richmond, for instance, there is more than one man who knows about law and what you call business conditions?

A. That is true.

Q. Why would he have to just go to one man? Why couldn't he have two or three to go to?

A. A matter of personal privilege and the ability of the agent in selling his personal services.

Q. So, getting back to the point of why you would feel culpable if I had the premises liability insurance and didn't have the products liability insurance, and even though there is no legal liability on you, you would feel you had sort of failed me if I had a suit brought against me on products liability, your idea is that every important assured has some one agent that he relies on to protect him in all his insurance matters?

A. Personally, I would feel that I had failed to give proper advice to my insured.

Q. (The question was repeated.)

A. No, I don't say that. I say the tendency is going in that direction, particularly on localized business where one man can keep in touch with it and in touch with the assured.

[fol. 573] Q. If an insured doesn't bow to that tendency and has three or four, is each of them to feel this sense of failure and culpability if any casualty occurs in connection with which that assured might have had insurance and doesn't have it and that it is their responsibility and fault and failure that he hasn't got it?

A. Yes, I think that everyone of them would have a reasonable feeling that he had failed to give him advice on which he could probably have gotten all of his business from his competitors.

Q. And, as I understand your argument in this case, all of these various countersigning agents that might have been countersigning these different policies, have got to feel that same feeling of culpability, have they?

A. No, I don't think the countersigning agent would feel quite the same culpability because his efforts, if made, to advise the owner of the business, or the insurance head, might not be received and he might be told that the owner wished to discuss the questions with the broker. It would, nevertheless, prove the value of the service of the local man if, through his suggestions, the policyholder was better protected.

Q. Suppose there were four or five different countersigning agents or thirty or forty in the different localities of coverage and they all told him different things, whose advice is he going to follow then?

A. If the advice is correct it can't differ and, of course, he has got to be the judge as to which of the thirty or forty agents advises him correctly.

[fol. 574] Q. Isn't it an actual fact and truth that when those agents come around and give him unsolicited advice about new protection he ought to have, what they are doing is trying to sell some insurance, isn't it? They are not trying to service something he already has? Isn't that the truth?

A. Mr. Christian, it is, of course, perfectly patent that insurance agents are in the business for profit and not as philanthropists but, in order to secure their maximum profit and their continual profit, service is the essence of the insurance business.

Q. As to these important assureds that service is usually provided by some one man, isn't it?

A. I would say the final crux of it is usually performed by one man but frequently more than one man is connected with the final result.

Q. And you think that if ten or twelve agents undertook to advise me independently about whether I needed a certain coverage or not, if they were all intelligent men their advice must all be the same, that there is no such thing as judgment in giving advice as to insurance matters?

A. I did not say that.

Q. I thought you said if there were thirty or forty agents and if they all knew what they were talking about their advice would be similar?

A. It would be somewhat similar but the human element enters into it and the way you put it and all the other facts connected with it might vary somewhat because if all of [fol. 575] us said the same thing you would be in an awful fix as to whom to pick out. I didn't mean to say that I thought thirty or forty men would give you the same advice on any subject.

Q. Going back to my department store case, if I am wrestling with the proposition of whether I should have a $20,000 and $200,000 public liability policy or a $10,000 and $100,000 public liability policy and I submit that to thirty or forty agents you say all of them are going to tell me the same thing?

A. No, I don't say that, not at all. Some might tell you you ought to have double your maximum and some might say you are wasting your money.

Q. You admit the propriety of my having some one agent like Mr. Tabb or Mr. Gibson on whose advice I rely about that rather than on the advice of miscellaneous countersigning agents who might be telling me something different, do you?

A. Well, I think for simplicity you would select one man but I think you would expect him to get all local advice that was possible, and assistance, especially if your business covered in many localities where one man, living in New York, can't possibly keep in close touch with the conditions of your business in forty or fifty different localities.

Q. In your examination the other day which has been transcribed by the reporter you said at the bottom of page 530, when Mr. Staples was examining you as to the service of the producing agent in connection with an automobile fleet risk covering exclusively in Virginia, so far as the garage places and principal use places of the cars are con- [fol. 576] cerned, but covering in many cities of the State of Virginia, this is the service he would perform and the way he would perform it: "It isn't necessary to have any local agent in other towns to countersign that contract or to have any reference to it in most cases, so the agent who writes that risk in Virginia usually does the whole job and goes to the towns, if there is any need for local service, and he might, if he incurred some purely local situation, call in some agent to help him but that very rarely arises in intrastate business." There is an implication that in such a case as that a Richmond agent, writing that business for a Richmond assured, might sometimes go to the towns where the cars are garaged. I ask you for what purposes he would go there?

A. He might go there in connection with a claim or there might be some doubt as to the exact character of cars on which the premium is based and he might go there to assist or even independently take up safety measures incident to the cars at that point.

Q. If there was doubt about the proper description of the cars, would it be better to resolve that doubt by looking at the bill of sale for the car and perhaps the Motor Vehicle certificate and the license and all the other documents that are at the home office or would it be better to get on a train or in an automobile and drive to another part of the state on the chance that you would catch the car out of use that day and could see it?

[fol. 577] A. I would say that you would certainly exhaust every means you could find to avoid making an expensive trip but frequently none of the sources you mentioned are entirely accurate.

Q. You say that it is frequently true that neither the bill of sale nor the state license nor the title certificate would contain an adequately accurate description of a car to enable the premium rate on the car to be determined?

A. The use of the car also frequently governs the rate and any restriction put on the car for rate purposes might not be to the insured's interest and the use of the car is very important as well as the exact type of car.

Q. (The question was read) Is that what you want the Court to believe?

A. I meant to state that these sources of information do not govern the use of the car necessarily and I have found that an examination of the car, with advices as to it from the assured as to its use, has accomplished a reduction in the premium.

Q. Why is it necessary, if you are writing a contract for me in Richmond and I am the owner of that car or the President of the company that owns it and I have here my executive assistants who govern the use of the car, why is it you can't get all that is necessary as to the use of that car from talking to me instead of going out in the country somewhere where neither I nor my executive assistants are [fol. 578] in order to find out how the car is used?

A. Well, I think both are conceivably necessary, but I can't see that it lessens your service whether you discuss it with the head office in Richmond or whether you take the trouble to go out and look at it. Both are services of the same kind and the insured is not interested in whether you spend money in his behalf or don't spend any money. The result is what he is after and in most cases you can get the information from headquarters and don't have to make any trip. I merely mention the possibility of a trip because the man controlling the insurance very often is in doubt as to just what change can be made in the use of his car or many other things that the agent might suggest. He might settle it right in his office and he might say, "You had better look this car up and tell us then what you think." It is all a form of service and I did not mean to tell the Court that traveling through the state is a usual or compulsory

part of the service given under an automobile insurance policy.

Q. I want to get this record accurate and be certain that I have it accurate. I understood from your testimony the other day which I read out of the record that there were occasions when you would need to go to the town to find out what kind of car it was. I understand that you retract that now, at least to this extent, that you admit it would be a most unusual case when you would have to use anything beside the bill of sale and the evidence in the possession of the persons at the home office of the assured to find out the kind of car it is?

[fol. 579] A. I would say that the great majority of cases don't require a trip to the actual scene of use of the car.

Q. I understood this morning, after you had admitted that it ordinarily wouldn't be necessary to go to the location of the garage or use of the car to find out what kind of a car it was, that you then indicated it might be necessary to go there to find out how it was used but in a later answer you have retracted that and have admitted that in most cases you could find out the use of the car from talking to the people at the home office who direct and govern its use; is that correct?

A. Yes, but I don't consider that I have retracted anything. I have enlarged it in an effort to put before the Court my conception of service under an automobile policy.

Q. You said, as I understood it, that another occasion when you might want to go to the town where the car is garaged and principally used would be when there was an accident and you would want to go there to find out something about the accident or to serve the assured in some way in connection with the accident. Will you tell me how often in the last month, say, you have had to go to a town as much as one hundred miles away from Richmond to investigate an accident in which a unit of an automobile fleet has been involved as to which you were the producing agent?

A. I don't recall having to go a single time.

Q. I used the period of one month. Can you tell me when you have done it in one year?

A. I don't recall that I have done it in one year unless [fol. 580] a question has arisen in connection with a claim settlement.

Q. Can you recall that you have made a trip to some town more than one hundred miles from Richmond to investigate an *an* accident or furnish accident service in connection with a fleet risk?

A. I can't recall accurately any trip of the kind because in most such cases we get the information over the telephone or from the assured and from our own claim men and this kind of claim service, requiring a trip, was mentioned more as a possibility and as a service we are prepared to render if the necessity arises.

Q. When you speak of "our own claim men," what your mean is the salaried claim people of the Travelers who are entirely independent of you and are in no way under your authority, don't you?

A. I don't think that statement is quite accurate. The company pays them for their services but recognizes the agent as being entitled to discuss with them all claims that come up and if opinions vary they largely listen to what we have to say in connection with the handling of the claim.

Q. I now ask you do you have any control over the time of Mr. Davison or any control over the amount of his salary or any control over the time or amount of salary of any of his subordinates?

A. None whatever.

Q. And you don't have any authority to employ or discharge claim people for the company?

[fol. 581] A. No, sir, none directly whatever.

Q. And he has no obligation to report to you or account to you for any of his actions, except the obligation of courtesy and that you and he are members of the same organization; you have got to live together and he values you as an extremely large producer and a helpful factor in his company just like you value him. It doesn't go beyond that, does it?

A. Yes, it does. He is instructed by the company, and they agree with me, to report all payments of claims to me and, under instructions from the company, he confers with my office on claims originating under policies issued through our office. This is not compulsory in the sense of referring every little claim to us for our approval but it is a matter of cooperation and keeping us posted on the handling of claims under our policies.

Q. The procedure is this, that you have a policy and a claim arises or is pending in the sense that an accident

occurs. You are required to file with him a claim form, aren't you?

A. We send to him a transcript of the policy showing him what is covered.

Q. And report the notice of claim?

A. And report the notice of claim. In some few cases we settle and receive reimbursement from him but that is not frequent or very usual.

Q. After you report the thing to him my understanding is that he and his adjusters go ahead and settle it and then when they make a payment, whether it is to the assured or whether it is to some third party, they let you know they [fol. 582] have paid Mr. Tom Smith $200; is that right?

A. Correct, but we go further than that. When we report a claim or afterwards have information on which we wish the claim not paid, we advise them and they confer with us before they make a payment.

Q. On page 530 of this transcript you said, "It is often necessary for the producing agent to examine the cars personally to see whether a pick-up truck rate would apply or a truck rate." Do you still insist that this is often necessary in the sense that it is often the fact that the bill of sale would fail to disclose that and that the title certificate and the license and the President of the company and the subordinate officials of the company at the home office would be unable to tell you that?

A. They would for accurate rating purposes because a pick-up truck carries a reduced rate only on condition that it does not make wholesale or retail deliveries and very frequently the insured changes the body of a truck after getting a license and does not report it, so that it is very important to look at the truck and form your own opinion and transmit it to the insured and in some cases I have had the use of the truck changed to eliminate wholesale and retail deliveries and give it to another truck so that he could get the lower rate on the pick-up truck.

Q. Don't you see though that your actually seeing the truck was not what enabled you to do that but what enabled [fol. 583] you to do that was the man told you how he was using the truck and you said to him, "Why not use it in a different way and you can get a better rate?"

A. I just recently insisted on seeing the truck because the average man, owning one or two or three trucks, doesn't know exactly what "pick-up truck" means.

Q. We are talking here about a risk that is a fleet policy covering in many Virginia cities. You say the average assured under a fleet risk, covering in Virginia cities, doesn't have persons at its home office who can answer your questions as to the extent that they affect the rating on that truck?

A. Yes, sir, I have never seen a corporation big enough yet to know much about the insurance business.

Q. They certainly are able to tell you whether they use the truck in making retail or wholesale deliveries if you ask them, aren't they?

A. That is a point of great discussion, Mr. Christian, as to what constitutes a retail or wholesale delivery.

Q. How can you tell from looking at the truck whether it is used to make one or the other? Haven't you got to see what the deliveries are?

A. By looking at the truck and its body and, knowing the commodity furnished by the insured, you can arrive at a pretty definite conclusion as to whether it can be possible to make wholesale or retail deliveries.

Q. And you do tell the Court that you often have to go around the state to different places and look at trucks to [fol. 584] find out what rate applies on them?

A. No, I did not state that at all. We would be very loath to make a trip of one hundred or two hundred miles to look at one car when the insured and the employees of the assured were in position to tell us all about it and we could put an embargo or rather a restricted endorsement on the policy and explain it to them and they would be satisfied with it.

Q. But you do say here on page 530, Mr. Tabb, or are recorded as having said that it is often necessary to examine the cars personally. Do you still stick to that?

A. Yes, but I didn't mean and I didn't think my answer meant that we made it a habit of going all over the state for that purpose. I had more reference to local fleets.

Q. We are not talking about a local fleet, Mr. Staples particularly said he was talking about a fleet that was garaged in many of the principal cities of Virginia.

Q. Let us make it that there were several cities. Do you want the Court to believe that when there are several cities that it is necessary for you to go around to those several cities and personally inspect those trucks in order to put the proper rates on them?

A. Not frequently because we get a lot of that information from our inspectors who go to these places, and if there is any doubt about the use of the truck or the kind of car, we try to get them to give us the information.

Q. Do you recall any case where you have had them go and find out that a car was rated wrong in one of those fleet policies?

[fol. 585] A. I don't recall that I have called on him in many years for that service, no.

Q. You said just now that the reason that you didn't have to go and personally inspect these cars to find out whether they were rated correctly was, to use your language, that "we have our inspectors do that?"

A. If I needed it.

Q. And now I understand that no such transaction has occurred, as far as you can recall, in many years? Is that correct?

A. Right, correct.

Q. Then getting back to my question of whether you spoke correctly yesterday when you said for the court's information that it is frequently necessary for you to personally examine these cars in order to get the correct rating, and having reference to your modification of that today in which you said you didn't have to personally do it because you got "our inspectors to do it," you now say, as I understand it, that in many years no such transaction has taken place; is that correct?

A. I thought my testimony, Mr. Christian, bore largely on local cars and not exclusively on fleets located at various cities in the state. We figure that large insureds know more about their risks and they have men who give us the information largely locally and we depend on that information. Where the car is readily accessible, without much expense or trouble, we personally look at it.

Q. You mean then if you called at my store here in Rich-
[fol. 586] mond and the car was sitting outside you would look at the car?

A. Of course, but if it wasn't outside the store we wouldn't abandon our examination. We would find out when it would be there and we would come back again and look at it. I had to do that in a recent case.

Q. And that was not a fleet case?

A. It was a case of three or four cars but not known as a fleet risk.

Q. And they were all cars that had their principal garaging and use here in Richmond?

A. Yes.

Q. Talking about these fleets, aren't there a good many fleets that are not susceptible of safety conference service and inspection service such as, for instance, fleets of traveling salesmen whose cars are more or less the pleasure type of vehicle and are garaged wherever the salesman happens to make his headquarters and are never brought together?

A. Under such cases it is more difficult to put in effect very effective safety measures but we have letters written by the executive officer of the corporation to such salesmen embodying our suggestions and giving them a warning in connection with their accident record. We accomplish the safety service in a slightly different way.

Q. By mail?

A. By mail and most salesmen are called into their headquarters at least once a year and we ask in many cases that we be allowed to address them and explain safety measures [fol. 587] and all when they are in their office.

Q. What headquarters are those salesmen called into as a rule?

A. Into the headquarters of their particular division. I don't believe that it would be practical for a company, operating in forty-eight states, to call its salesmen into its New York office. Usually the United States is divided into sections and in most cases into state divisions and those employees report to the Sales Manager for that particular division or state.

Q. Do you have any sales conferences around in the various states where your tobacco company customer's salesmen travel or do you have those conferences here in Richmond at the head office of the Tobacco Company?

A. We personally handle those in Richmond but very rarely go to remote points where we leave that work to the inspection and claim departments of the company.

Q. And when you spoke of "we" just now, you meant to have reference to the claim and inspection departments, didn't you?

A. I don't know in what sense.

Q. You said "We usually have safety meetings at the division headquarters."

A. We usually call them in for their expression of opinion

and any emphasis that they can give to our safety recommendation.

Q. Who are "we"—your agency?

A. We, as an agent. I have two partners.

Q. That is clear to me. Then you want the Court to [fol. 588] believe whenever these safety conferences are held, that it is the result of your having called these inspectors and claim people in and asking them to hold the conference?

A. It is due to both. Sometimes they make the suggestion and sometimes I make it and sometimes the insured makes it.

Q. As a matter of fact and of routine, those inspections are going on all the time at the instance of the company, aren't they?

A. Yes. A well managed company spends millions in its safety work.

Q. We are talking principally about the Travelers, since you are more familiar with that. It holds those safety conferences as a matter of routine whether you ask it to or not, doesn't it?

A. Yes, they do but we usually put some emphasis in it and they usually ask us what our opinion is and to please arrange for a meeting, realizing that the agent can get the executive officers, whereas an inspector or claim man rarely can do it.

Q. And that is because the producing agent has a contact with the executive officer who placed the insurance?

A. He not only has a contact but they look to him for advice and guidance on all matters affecting his insurance cost and his insurance coverage.

Q. And I understand also that you admit that the company has a regular routine of getting these drivers called into consultation for safety measures with its inspection [fol. 589] and claim department employees periodically, without regard to your request?

A. Yes, I think that it is usual for them to put into effect some system of safety work and we have it understood with them that such action shall be taken wherever they see an opportunity to serve the policyholder.

Q. You used the expression "we have it understood with them." Wouldn't it be more accurate if you would say it is a notorious fact that they do that?

A. Are you referring to the Travelers only?

Q. Yes.

A. Yes, we advise the policyholder of that superservice and we expect the company to render it which they agree with us they will do.

Q. You mean they hold themselves out to you as rendering it, don't you?

A. Yes, sir.

Q. And they hold themselves out to the public as rendering it?

A. Yes, sir.

Q. And you hold the company out to the public as rendering it?

A. I don't particularly hold it out to the public that the company renders it. I hold out to the public that under a policy I issue it is rendered, both by me and the company.

[fol. 590] Q. Are the meetings which are engineered by the Travelers people usually gotten together at the instance of the agent or are they usually gotten together in the course of the ordinary year in and year out routine to hold such meetings?

A. I would say the Travelers' agents endeavor to impress upon the insured that these meetings and safety work are largely dependent on the agent and in most cases the company calls on the agent to arrange the meeting and get the executive of the insured to participate. I think the Travelers correctly look upon the agent as the source of contact with the insured and do not negative his power to help in safety work and thus keep the business and enlarge the business.

Q. That constitutes a satisfactory answer to my question for the reason that embedded in the body of the answer is the statement that the Travelers engineering and claim departments initiate the meeting and call on the agent to arrange it. Now I want you to give me an answer about other companies than the Travelers, if you know about other companies than the Travelers?

A. I would like to answer Mr. Christian's statement that my answer was to the effect that the Travelers always instigated the safety meetings. I would say that the agent instigates these meetings frequently. Regarding other companies, I again reiterate that I have no actual knowledge of what they do.

Q. On page 531 you are recorded as having said that a non-resident agent or broker, living in New York or Chi-

[fol. 591] cago, could not render as satisfactory service in connection with an automobile fleet risk covering automobiles principally garaged and used in many cities of the State of Virginia as a local Virginia agent could render. I ask you to specify what service you are talking about that a non-resident agent or broker, living in New York or Chicago, could not render in connection with such a risk as satisfactorily as a local Virginia resident agent?

A. I think that it is perfectly obvious that an agent located in a big city like Richmond, handling a risk, is in closer touch with the risk than a man located in New York or Chicago. I do not think, according to my experience, that any broker in these large cities makes it a habit to attend safety meetings or take any part therein. I have never heard of one doing it.

Q. I ask you to specify what service you are speaking of? Do I understand that you specify as a part of such service that you, as a Virginia agent in such a case, would attend safety meetings along with the engineering and claim department people, whereas the New York or Chicago agent or broker would not come into Virginia and do so?

A. I think it is true to say that they do not do so and that local agents in Virginia do perform that service.

Q. And you say that you are more apt to go from Richmond to Bristol to attend a safety meeting than a New York broker is apt to come, say, from New York to Alexandria to attend a safety meeting?

[fol. 592] A. I would say yes because we have got more time to do it and while the occasion very rarely arises for these trips around that you emphasize, it is my experience that a small local agent takes a great deal of interest in any fleet risks which are rare in Virginia compared to New York or Chicago and feels that he can give more time and service to it.

Q. You have spoken about attending the safety meetings. What else is there that this Virginia man can do that the non-resident man can't do, acting through the company?

A. I don't know that there is much he can't do in the realm of possibilities. I am only speaking of what I believe to be the practice up to the present date.

Q. What else is there then that he doesn't do, irrespective of whether he can or cannot do it, which the local man does do besides attend the safety meetings? I am trying to get you to specify?

A. My experience is that the broker in a distant city looks to the local agent through whom he places the business to look after any claim disagreements or any complications that sometimes arise under a policy and report to him. It is perfectly true that after he gets the report he would come to the place or make a trip, if he deemed it necessary, but the broker expects his local agent or associate, if he has one, to render service and it is usually done or the broker changes the company or changes the agent to get better service. The question of service under an insurance policy, Mr. Christian, is one of very indefinite extent.

[fol. 593] Q. You have spoken of the service of attending the safety meetings as a service you think that the Richmond man might perform in Bristol better than the New York man would perform it in Alexandria. Do I now understand you to make a further specification that if a claim arises the Virginia resident agent would be better situated to be helpful to the assured and would actually be more helpful to the assured in getting the claim satisfactorily adjusted than the New York agent or broker, who was the producing agent, would be?

A. I do so state because the Virginia agent is more familiar with the conditions and he is the acknowledged agent of the company and the company in most cases listens to their own agents to a far greater extent, in my judgment, than they do to a broker who has no exclusive allegiance to any company.

Q. My question did not relate to a producer who is a broker. I was talking about a producer who is an agent or a broker. That being so, would you limit your specification to cases where the non-resident producer was a broker and not claim an advantage for the Virginia agent if the non-resident producer was equally an agent of the company?

A. No, I inferred your question referred to a broker. It is conceivable that the Virginia agent might have a very much larger volume of business with his company and other relations with his company which would give him a greater hearing and influence with his company than another agent of the same company who might be in a very different position.

[fol. 594] Q. And it is also conceivable that a New York agent of the Travelers Insurance Company might give the Travelers more business than its Richmond agent, isn't it?

A. Perfectly conceivable but his experience on his business and other factors might make a difference.

Q. And it might make a difference which would cause him to be a better instrumentality to assist the assured as well as making a difference which would cause him to be a less good instrumentality to help the insured than the Virginia agent? Is not that correct?

A. That is perfectly conceivable.

Q. I want to ask you if it isn't true that, speaking in round figures, there are 75 foreign stock casualty and surety companies licensed in Virginia, and 7 alien casualty and surety companies licensed in Virginia.

A. What do you mean by "alien"?

Q. British or Swiss or what not.

A. Yes, I think that is approximately correct.

Q. With reference to the number and importance of domestic casualty and surety companies, my impression is that they write so little casualty and surety business that they are substantially not a factor in the total volume, are they?

A. My answer must be a very general one, based on impressions which might be classed as street talk. Casualty companies domiciled and incorporated under the laws of Virginia in our State are few and write a small proportion of the total volume of casualty lines in the State of Virginia.

[Vol. 5-5] Q. What about surety?

A. Surety companies are in the same category.

Q. The only one you know of that is a factor at all in the casualty business is the American Fidelity & Casualty Company which pretty well limits its coverage to bus line liability coverage, doesn't it?

A. Bus lines and freight carriers and special hazards are their principal lines, according to my understanding, though I have no connection with them and know actually very little about their operations.

Q. My understanding generally is that there are about 150 foreign stock fire companies doing business in Virginia and about 30 alien stock fire companies. Is that generally correct?

A. I thought the total was around 200, but 180 may be correct.

Q. My information is that a company like the Travelers or like the Aetna, with their position of leadership in the casualty and surety field, would have approximately 125 resident agents licensed in Virginia; is that correct?

A. I would say they had many more than 125 but I will call your attention to the fact that the Travelers does not write surety business. You mentioned the Travelers and the Aetna being predominant in the casualty and surety field.

Q. What about in Richmond? Has the Travelers got approximately 20 agents licensed as resident agents, would you say, in Richmond?

[fol. 596] A. Yes, I think that is approximately correct, though I haven't had any occasion to check it accurately.

Q. And the Aetna has about the same number or a little less?

A. I would say the Aetna had very many more.

Q. I am not talking about fire agencies.

A. In casualty and surety I would say they have very many more than that.

Q. In Richmond?

A. In Richmond.

Q. Of course, a good many of these agents are duplicates. For instance, you are an agent for the Travelers and you are an agent for the F. & C. too?

A. Yes, sir.

Q. And then you might at the same time be an agent for the Aetna, though you are not?

A. Though I am.

Q. You are?

A. Yes.

Q. So you are an agent for the Travelers, Aetna and F. & C.?

A. Yes, though they know that my principal company is the Travelers.

Q. About these agencies which are represented by membership in this association, is it your understanding that Tabb, Brockenbrough & Ragland is about at the top in vol-
[fol. 597] ume of annual premiums produced in Virginia among all the general insurance agencies of Virginia?

A. We are among the ten leaders, I would say, in the State in total premiums written in the casualty lines.

Q. Couldn't you say that you believe you are among the two leaders in the State?

A. I don't like to make that very extravagant claim because I have never gotten any accurate figures on our fellow agents' volume.

Q. Do you know of any agency to which you could call

my attention that you think has any more casualty and surety premiums than you have?

A. No, I have no knowledge that would guide me in making a correct statement on that line.

Q. Will you proceed to answer that question? I just want you to say what agency, if you know of any in Virginia, to which you can point, you believe has a larger volume of casualty and surety premiums than you have?

A. I feel that we are close to the top in the casualty premiums, but far from the top in surety premiums.

Q. I am talking about the combination of the two.

A. Well, when you combine the two I am right much at a loss to form an accurate estimate.

Q. Name a couple then that have more casualty premiums than you have, if you know of any.

A. You are now restricting the question to casualty?

[fol. 598] Q. Yes.

A. Dobie & Bell at Norfolk, and another agency I can't recall at Norfolk, the Davenport Corporation at Richmond, and Gibson, Moore & Sutton of Richmond are reputed to have quite a volume of casualty business.

Q. You don't know whether it is less or more than yours?

A. And I do not know whether it is less or more, but we are substantially in the same class.

Q. There is a sharp drop down on casualty after you get out of the class of these agencies you have mentioned as to the volume of casualty premiums in other agencies?

A. I would say so.

Q. Coming to the surety business, who do you think among the agencies has a larger volume than your office or may have a larger volume?

A. The same agents mentioned above and Boswell & Curtis of Richmond, Lunsford & Son at Roanoke, are the only ones that I can recall offhand as being in the big class.

Q. In Richmond, after you leave Tabb and Davenport and Gibson-Moore & Sutton, you would possibly come, according to general repute, into the class of Boswell & Curtis and Julius Straus & Sons for total combined volume of premiums, wouldn't you?

A. Yes.

Q. And then it is a pretty sharp drop down from Boswell & Curtis and Julius Straus to other agencies here, accord-

[fol. 599] ing to repute, isn't it?

A. I would say so, though my opinion is not very valuable because those considerations never enter into my head or my activities.

Q. It has been shown in this case that Travelers, without doing a fidelity and surety business, has about a million dollars of annual premiums for the purposes of Virginia premium taxation, and, speaking generally, Aetna and F. & C. and Maryland have about half a million dollars each, theirs, however, including surety as well as casualty. My understanding is that U. S. F. & G. Company has about a half million a year combined casualty and surety and that after that you drop down among the stock casualty and surety companies to Employers Liability with a little more than a quarter of a million and New Amsterdam with a little less than a quarter of a million and the rest of these 80 companies taper off from there. Is that generally in accordance with your information?

A. I would say that that estimate is reasonable, though again I repeat that I never trouble myself with such figures and am therefore a very poor witness as to the relative business of companies in the State.

Q. From your testimony the other day as to the casualty premiums in your agency, I arrived at the impression that of the total casualty premiums received by Travelers in Virginia your agency received credit for the production of about 25%; is that correct?

A. I think that is approximately correct.

[fol. 600] Q. And the other agents, whether they be 125 or more than 125, produced the other three-fourths?

A. Yes, sir, I think that is approximately correct.

Q. You had something to say the other day about companies paying the proper amounts of premium taxes to the State of Virginia. Is it in your mind that perhaps the Travelers or the Aetna or the F. & C. or the Maryland or the U. S. F. & G., or any of the other stock companies, failed to return to the Tax Authorities of the State of Virginia what should be returned for premium taxation?

A. I have a high opinion of all the companies you mentioned and would not for one minute insinuate that these companies evade their tax obligations, and I have no information along this line whatever.

Q. Have you heard in your contact with the business at any time in recent years, from a responsible or informed source, that the State of Virginia is not receiving proper

taxes from stock casualty and surety companies admitted to do business in Virginia?

A. Of course, you hear insinuations of all kinds and these opinions or statements are largely gossip with little or no foundation in many cases, and I am utterly unable to judge of the talk along this line. It never has interested me to a great extent, other than as a citizen of Virginia who hopes that we get our proper taxes.

Q. In asking you the question I spoke of the sources as being responsible and informed sources. You spoke of in-
[fol. 601] sinuations. I want to know if you have ever heard either a reasonably informed source or one that you thought was reasonably informed or a reasonably responsible source insinuate such a thing.

A. Yes, I have had conversations with responsible agents in the state, according to my recollection, who felt that such evasions of taxes were a fact, based on their either seeing a policy or hearing of one that had no Virginia agent's countersignature and which they then assumed might be easily overlooked, either innocently or purposely, in taxation reports to the State of Virginia, the contention being that if a local resident agent in Virginia signed the contract and had the record in his office there would be some check if the State wished to make it and the company would, of course, have a more distinct record of the case, being a Virginia coverage, if it went through a local agent's office.

Q. When did those conversations take place? In the last five years?

A. Yes, I would say not only in the last five years but, from a more or less general impression of agents in the state, it has been going on for many years.

Q. The contracts to which you have reference are contracts which cover in Virginia but which were not countersigned in this period of many years more than five years in Virginia?

A. That is correct, with the additional statement that many of these contracts have been signed by special agents or other salaried employees of the companies with no rec-
[fol. 602] ord given to any local agent which would distinctly place the policy in a Virginia agent's hands.

Q. And the theory is that a resident of Virginia like Mr. Adair, who has raised his family here and is just as much a Virginian as you are and owns his home here, and, as far as I know, is in every way as loyal to Virginia as you are,

if he countersigned a policy there wouldn't be as much prospect of that helping the State get its taxes as if you signed it; is that correct?

A. I admit all that.

Q. I am asking you if my understanding is correct.

A. I would like to say I admit all you say about Mr. Adair whom I admire very much and don't wish to be put in the position of casting any reflection on him or any other branch office employee. My understanding, however, which I think is correct, is that the practice of countersigning a policy by a branch office manager or employee carries with it no record in the Richmond office of that policy and, therefore, the countersignature by such person is more or less a perfunctory operation which differs very widely from the countersignature by a commission local resident agent in Virginia.

Q. Are you aware that the responsible officers of the companies admitted to Virginia are required annually to make tax returns to the State of Virginia under oath?

A. My understanding of the reports required of non-resident insurance companies is that these annual reports are signed by executive officers at the home offices of the com- [fol. 603] pany. While he signs these statements under oath, I think the oath simply states that the figures are correct, according to the best of his knowledge and belief. Necessarily, such executives do not figure out the details on a report and they are perfectly conscientious in taking the oath on such reports which are necessarily based on figures supplied by various clerks and heads of departments and are therefore entirely, in my judgment, beyond the executive's power of knowing personally their accuracy.

Q. And the court should infer that if you had to make that report for the Travelers you would personally examine into all of that million dollars of premiums per year and many thousands of policies involved and you wouldn't make use of the services of clerks in helping you get the information; is that correct?

A. We would make use of clerks but our problem would be so simple that it would be almost impossible to err because our business would be almost entirely confined to State of Virginia premiums. I said in my former answer that I was making no suggested accusation of dishonesty or evasion by any company. My whole statement is that it would be easy for an omission to occur unless the policy was placed through a Virginia agent.

Q. Suppose it were placed through a Virginia agent and this officer, who is a non-resident of Virginia, were making up that tax return each year, he would still have to use clerks, wouldn't he, in assembling the information coming from 48 different states of the United States?

A. Of course he would.

[fol. 604] Q. Why is it you think that in examining his home office records and determining on the allocation of those premiums among the various states that any record you might have down here in your office is going to assist him in making up his tax returns from his records at the home office?

A. I did not so state that it would help him. My entire inference was that it would help the State of Virginia.

Q. How would it help the State of Virginia if he doesn't have the use of your records but he makes up the tax return after making the allocation between the various ones in the 48 states from the home office records? How is it going to help the State of Virginia for you to have this record down here if that man at the home office doesn't use it in making up the tax returns.

A. For the simple reason that if the State wished to do it they could check the office records of the agents in Virginia and such records would be confined to Virginia business and simplify the matter very much.

Q. Under the law of the State of Virginia the Commissioner of Insurance is expressly authorized to visit the office of a company, at the expense of the company, upon any charge of a failure to make a correct return, and, at the expense of that company, to make a thorough examination of all of its books and records, is it not?

A. Certainly he is, but with my limited knowledge of accountancy, I can vizualize very great difficulty in ferreting out policies which partially cover in Virginia in an aggre-

[fol. 605] gate business running into millions.

Q. You are aware that it is made a criminal offense to make a false return, are you not?

A. Yes, I am perfectly aware of it and I do not suggest that the president or other officials of any reputable insurance company would be guilty of purposely swearing to a false statement.

Q. The Insurance departments of the various states are constantly making what they call convention examinations of the companies, are they not, so that your company, for

instance, would likely be examined every two or three years by one of the Insurance Departments of one of the larger states or by the Insurance Departments of three or four or five of the states, acting in concert, and conducting the examination together.

Q. In answer to the question, of course, I would expect you to have reference to your reading insurance journals all the time and seeing where these examinations have been made and I would imagine you would have a great interest in the reports of the various companies as a person whose company is in competition with the various companies. Of course, the objection is quite without foundation, as you know.

A. Yes, I know that the companies are examined by Insurance Departments, but just how far these examinations go in looking at every policy issued by a company appeals to my common sense as being an impossibility and, therefore, I think any safeguard the State of Virginia can adopt to prevent errors of omission or commission is a very desir-
[fol. 606] able step and I do not think the leading responsible companies of the country would have any objection to being thoroughly checked for taxation purposes.

Q. You say you have been in the insurance business how many years in Richmond?

A. 47 years.

Q. You have been countersigning these fire policies and sharing in the commissions when you countersigned, most of that time?

A. I have been in the fire business, roughly, about 25 years.

Q. Tell me, roughly, at what times and by whom, that is to say, by what state officers or their deputies, examinations have been made of your records to check up on whether the particular companies among these casualty and surety or fire insurance companies, admitted to Virginia, have made proper premium tax returns.

A. They have never visited my office for such purpose, but——

Q. Did you ever hear of their visiting the office of any other agent in Richmond for that purpose?

A. But changing conditions have indicated that such might be the case in the future.

Q. What are those changing conditions that would indicate such might be the case in the future?

A. I presume, in answer to Mr. Christian's question, that the changing conditions are based on gossip and hearsay [fol. 607] which have reached me so that such omissions or evasions have grown and may be a serious detriment to Virginia tax receipts.

Q. And you solemnly swear that you have heard it stated by what you regard as an informed and responsible source that evasions of taxes have recently grown in Virginia and might endanger Virginia's tax receipts?

A. Yes, the people talking to me I would regard as conservative and reliable, but I——

A. But I have made no charge that such is a fact and wish to emphasize my preceding testimony that this is hearsay and very indefinite so far as actual basis for any charge is concerned.

Q. I ask you then whether in all the 25 years you have been countersigning policies and maintaining records of them anybody in authority, representing the State of Virginia, has ever examined your records to verify whether they were getting the proper premium taxes, and you said "No".

A. That is right.

Q. That was an entirely accurate answer to my question, that they never have?

A. Yes.

Q. I am giving you, Mr. Tabb, a chance to correct your statement. If you think you have made a mistake and nothing recently has come to your attention to indicate evasions are on the increase, you are entirely at liberty to say you are mistaken and you withdraw that?

A. I don't think I have any reason to withdraw any of my statements which I have very emphatically stated are [fol. 608] reports and conversations of a general nature which lead me to conclude that there must be some reasonable basis for general reports—nothing specific. I could not mention a single policy right now that has been cited to me. It is just a general opinion which may be correct or it may be in error and my only thought is that any double check on the situation is of advantage to the State of Virginia.

Q. You said these conversations were with informed and responsible people in that they were agents whom you considered informed and responsible, didn't you?

A. Yes, sir.

Q. And I call on you to repeat the substance of what anyone of them told you, without mentioning his name. Just tell me what he said to you in general terms.

Q. I ask the witness again to state generally the substance of the remarks made to him which are the basis of his testimony, without giving the names of the parties who made the remarks.

A. I feel, Mr. Christian, that I have fully answered this question and can only reiterate that these conversations are general and have simply made an impression on my mind which I have endeavored to put into the record to clarify my answers. It would be utterly impossible for me to quote conversations or places or names when the whole testimony given by me here has been explained as general and as my own impression derived from such conversations.

Q. At any time, to your knowledge, in the past ten years, [fol. 609] has any agency organization in Virginia, or any responsible agent, or anybody else, made any charge that you know of against a particular company that it has failed [fol. 610] to make proper tax returns and caused an investigation of that company's books and records to ascertain whether or not it has made false tax returns?

A. I do not recall any accusation made by any individual or association, but, to illustrate my point, companies who are supposed to be entirely reputable are guilty of writing policies in Virginia, though not licensed to do so, and know that they are evading the laws of Virginia. I mention this to show the possibility that other similarly reputable companies might do the same thing or might not be as careful in checking up these situations as would be a perfectly apparent result if the Virginia business were segregated.

Q. What other services are there, in addition to attending those meeting and giving better help in connection with the adjustment of claims that the local man can give better than the non-local man could give?

A. I think the local man necessarily knows more about any local developments that might occur. Of course, all of this question involving service is one of development and not fixity and my testimony is to the effect that the local man should be in a position to render unexpected services more promptly than a man situated many miles from the state under consideration.

Q. What are these local developments with reference to these fleet policies which you have in mind when you say that

the local man would understand those local developments better than a non-local man?

A. Well, they are so indefinite that it would be hard for me to define them.

[fol. 611] Q. Could you illustrate them if you can't define them?

A. Well, to illustrate them would be a very definite definition.

Q. Why is it that the claim service and engineering service of the company wouldn't be made available in those sudden emergencies of which you speak, just as readily in one case as in the other?

A. I think so far as the Travelers Insurance Company is concerned, the claim and engineering service might fill the bill completely but my testimony is along lines of all casualty companies, few of which maintain the accurate and far-reaching service of the Travelers.

Q. Naturally, you think the Travelers is the best company. The Fidelity & Casualty and the Maryland and the U. S. F. & G. and Aetna, Employers, New Amsterdam, and plenty of others I could mention, are able to live in competition with the Travelers, aren't they?

A. Yes, sir.

Q. And they, speaking generally of that group that I have mentioned and similar companies, purport to give their assureds just what the Travelers purports to give, do they not, speaking generally?

A. A purport and actual fact are often wide apart. I have actually had companies state that they were unprepared to give service and, therefore, wanted to cancel the risk which the Travelers took over and was abundantly able to furnish the service and, therefore, I have made the dis-[fol. 612] tinction in favor of the Travelers, bearing in mind that my long connection with that company makes me more familiar with their service and I do not claim to know all about the service of other companies.

Q. The point of our departure in this discussion was we [fol. 613] were talking about service. You had said that a Virginia resident agent would know more about local developments than a non-resident agent and I had asked you to specify what kind of local developments you were talking about that the resident agent would know more about than the non-resident agent, and I want you now to come back to that, please.

A. My reference to developments is two-fold. First, rates and rules applying to cars operated in Virginia are changed from time to time by the companies, and it is my opinion that a resident Virginia agent keeps in closer touch on strictly Virginia questions than a non-resident broker who might have business in 48 states, and the changes go on in each of the states; second, I can conceive of local ordinances, state laws and other more or less important changes would be within the knowledge of a local man very much more readily and completely than in a non-resident who has a wide territory and consequently would not be in such close contact and keep posted on a local situation.

Q. But you will admit that it is the duty of the local Rating Bureau to keep abreast of those things, will you not?

A. Yes, but the local Bureau assumes no responsibility for the application to an existing policy and expects us agents to look after the application of those rules.

Q. Wouldn't it be the duty of the National Bureau to keep abreast of those things, too?

A. Not so far as changes are concerned under existing policies in the states. I have never had the National Bureau to write me, so far as I remember, in connection with any matter.

[fol. 614] Q. But I mean they keep abreast of the changes for whatever effect they may have, either on existing business or future business and record them all, don't they?

A. I presume they do.

Q. You know they do, don't you? You know they are supposed to?

A. I am trying to testify to what I know and I don't know whether they do, or not. I have no means of knowing. I have no contact with the National Bureau.

Q. The companies keep abreast of them, don't they—the Travelers, for instance?

A. I would state, Mr. Christian, that in my humble judgment many companies do not keep very well abreast. This sounds to be a strange reply but I just feel, out of my experience, that some companies are very much more up-to-date, and on their toes than other casualty companies.

Q. That applies to agents, too, doesn't it?

A. It certainly does.

Q. If I am an agent having coverage in 48 states and I am under the same obligation to my assureds as a person only having coverage in one state, would it be presumed

that I would attempt to so organize my office as to keep abreast of what is going on in all the states of my coverage, or that I would attempt alone, and without the aid of any assistance, to keep up with all of those 48 states?

A. I would say you would do the best you could to keep abreast of it and it might be perfectly possible for you and your organization to keep entirely posted, but I submit [fol. 615] that an organization having a very limited territory, such as one state, could more easily perform that service.

Q. Of course, an organization with a given man, Mr. John Doe, in it and three given assistants, Messrs. X, Y and Z, having exactly the same volume of business, could attend to it with less trouble if it were all in one state than if it were in 48 states, but assuming that the personnel of the organization and the numerical strength of the organization is varied to meet the size of the business, then there is no more difficulty with keeping up with 48 states than there is about keeping up with one?

A. No, but we are talking about averages, as I understand it, and not some very outstanding non-resident organization which can perform a service and does perform it with great efficiency.

Q. In the case of these risks of these large assureds covering country-wide, do they usually go to agents and brokers with these efficient organizations of which we have been speaking or do they usually pick out some country boy in the backwoods and put their nation-wide coverage with him?

A. Well, of course, I wouldn't be so foolish as to accuse the heads of large nation-wide organizations with utter lack of judgment, but I believe, from my observation, that many large risks are placed with totally incompetent brokers and agents.

Q. Both in Virginia and out of Virginia?

A. Yes, but in Virginia we have so few headquarters of national organizations that I am not familiar with any of the activities of corporations with headquarters in Virginia [fol. 616] that would lead me to think that this condition prevails, because we haven't got them.

Q. Most of the Virginia offices of these large foreign corporation assureds have only people of very limited responsibility and authority in them, don't they?

A. I think the practice varies and certainly, so far as insurance is concerned. Some of them have their local

representatives place the insurance and others place it from their headquarters.

Q. You don't challenge their right to do as they wish about that, do you?

A. Not at all, but I hope that all of them will adopt the practice of placing it locally.

Q. And they will come mighty near doing it if this law stands up, won't they?

A. I don't know that the law has any bearing on it because it means not a nickel of expense to the assured.

Q. Presumably it would mean less service from the non-resident agent or broker if the non-resident agent or broker is not going to get but half as much money as he has been getting for performing that service, wouldn't it?

A. The assured would get, in my humble judgment, better service, and if the corporation sold its goods in Virginia I am satisfied they would get a great deal more business from agents and their friends and families in Virginia.

Q. My question is that if the large foreign assured, which has been placing its business with the non-resident agent [fol. 617] or broker who has been receiving all of the producer's commissions, continuing hereafter to attempt to place his business with that non-resident broker, nevertheless, has the transaction subject to that broker giving up half of his commission to some Virginia agent, wouldn't it be reasonable to suppose that that broker, as an economic proposition, would have to furnish less service than he has been furnishing up to now when he got the whole commission?

A. I don't think so because he couldn't hold the business unless he furnished service entirely satisfactory to his assured. The question of the amount of commission we receive does not enter into the service we render in any particular. We render the same service for $10.00 that we do for $10,000.00 and that has no bearing on the service question under an insurance policy.

Q. And you could go through life doing everything that you now do whether you were dealing with cases that had an average compensation to you in them of $10.00 or dealing with cases that had an average compensation to you in them of $10,000.00? Is that what you would have the court believe?

A. This insurance business is largely one of personal service, in my judgment, particularly when it is confined

to one state. The man producing the business, therefore, renders the service, and if he makes less money he has less income but his plan would be through excellence of service, to increase his business and offset any loss in percentage of commission.

[fol. 618] Q. I will put it to you this way: Supposing that the persons who are presently enjoying the emoluments of these foreign assureds, and who are non-resident agents or brokers, as the years flow past, die off and a new crop of those people has to come in, but the gross income that those new people can get from this business is only half of the gross income that this generation of those people have been getting, would you expect that second generation to be as efficient and outstanding people in the profession and to furnish as much service as this generation had furnished, notwithstanding they were only going to get half of the compensation for furnishing it?

A. I have never seen any difference in service on an insurance policy resulting from a cut in the agent's commission.

Q. Will you answer that question, now please?

(The question was read.)

A. Not necessarily because the half of the commission they would lose to local state agents would be offset by the service given by the state agent which would necessarily diminish the necessity for duplication of service by the non-resident agent.

Q. And you rest on what you have told the court thus far in my examination of you as to what that service that the local agent is going to furnish consists of?

A. Yes, I think I have covered the ground pretty completely.

Q. So what you think is the effect of this law, as I understand it, is that it is going to impose on these non-resident agents and brokers the necessity of ceasing to do a good deal that they have been doing and letting these resident [fol. 619] agents do that and that the assured is going to be better off because of the effect of that compulsion and the resident agent is going to be better off and this non-resident agent or broker is going to be just as well off?

A. Practically that is so and in many cases I think the assured would be better off.

Q. At the bottom of page 531 of this transcript Mr.

Staples asked you did you think that actual contact by the agent with the physical conditions pertaining to one of these automobile fleet risks is important in rendering service and you said it should be. What physical condition were you speaking of there that you stated to the court it was important that the agent should have actual contact with?

A. If a question came up as to the proper classification of an automobile, the local agent could inspect the vehicle with no expense, whereas, an agent, located outside of the state, would be compelled to make an expensive trip, both in time and money, on possibly a very simple and non-productive proposition.

Q. Your inference there is that you could go to Bristol or Alexandria or Roanoke without expense, but a Washington man would be subjected to very heavy expense to go to Alexandria; is that correct?

A. No, sir, I did not mean to imply such. I had reference to the agent being located in the same city or town where the automobiles are principally garaged.

Q. But in this suppositious case that you and Mr. Staples were discussing they are garaged at various cities [fol. 620] around the Commonwealth?

A. Well, in such a case the local agent would incur the same expense that the non-resident might if the distance was practically the same.

By Mr. Christian:

Q. Suppose some question came up about the proper rating of a particular car and suppose the car was six or eight miles from 11th and Main streets where your office is, as would be so with *with* some garages, and certainly more than a mile as to most of them, it would be a good deal easier for you to have the Travelers inspection people to look at that car than for you to go there and do it yourself, wouldn't it?

A. In the case of automobiles, we usually do it personally because it doesn't involve any engineering expertness.

Q. That isn't the question I asked you. I asked you wouldn't it be a good deal easier for you to pick up the 'phone and call Mr. Murphy up and ask him to do it than to go one, two, six or eight miles yourself and do it?

A. Yes, it would be easier but we think it would be more satisfactory to do it ourselves in a case of that kind and

I don't recall ever asking the engineering department of the Travelers to perform that service.

Q. You have a perfect right to ask them to do it, haven't you?

A. I have, surely.

Q. And they would cheerfully do it, wouldn't they?

A. I think they would.

Q. And they are here to do it?

[fol. 621] A. I don't know that they are specifically instructed by the company to render that form of service, though I have no doubt they would, but I again repeat, Mr. Christian, that in a case of that kind the agent does it himself just as a matter of common practice.

Q. What are the physical conditions then, in connection with this risk, which you have reference to in answering Mr. Staples' question as to whether it was important for the agent to have this actual contact? You have given one illustration of it. Can you give another?

A. Well, it is perfectly conceivable that accidents occurring might be somewhat dependent on the physical condition of cars and the agent should look into that and to do it most efficiently he should be personally familiar with the physical conditions in order to discuss their improvement with the insured or his representative.

Q. Your thought is that a car is more apt to be involved in an accident if the equipment is not safe than if it is safe and that it is important for the agent to be close to that car where he can keep an eye on it and make certain that it is at all times safe; is that right?

A. No, an agent doesn't take the burden on himself. I referred to a development that would point to the possibility of the equipment being poor. It doesn't often occur because people usually keep their cars in good condition physically, but I say it might occur and I think the agent would perform an important function in posting himself absolutely on those conditions so he could intelligently handle it.

[fol. 622] Q. That development would arise because you would notice some accidents happening which were attributed to faulty brakes or to the tires blowing out or this or that; is that correct?

A. Yes, or by observation of the cars, if they were retail deliveries, or something that came under your usual sight on the streets of your city.

Q. You mean that you would see them involved in accidents?

A. No, not necessarily. You might see them on the street and have no accident and yet form an idea that they were very much run down and in need of repairs, or you might see haphazard, careless driving on the part of the driver and report that to the assured. Those things will occur and an agent would feel like it was to his interest and his company's interest and the assured's interest to take that up. Those are the personal contacts that I had reference to.

Q. Taking the cars that you insure down at your office, you only see from day to day a very small number of them, don't you?

A. Of course, necessarily.

Q. And that is an insignificant thing you were talking about, the benefit the general body of assureds in your office get from your seeing their drivers driving too fast on the street or seeing that their equipment is ramshackle and telling them they have got to buy a new car or get rid of the fast driver, isn't it?

[fol. 623] A. I am only mentioning these things, Mr. Christian, to endeavor to enlarge on my testimony at your request as to what all of this service I have mentioned consists of.

Q. But you admit it is a diminutive thing that you are talking about now?

A. It might be diminutive and might be very farreaching. No one can tell.

Q. And you also admit very cheerfully, I suppose, if you notice my fleet looks ramshackle that you would much prefer having Mr. Murphy's inspection of the fleet and report on whether it is safe mechanically than to have to transmit to the assured any ideas you might form on the subject by watching the cars go by on the street?

A. I would certainly call in an expert to compare my opinion with him and get to a conclusion based on both.

Q. You don't have to call him in. He is constantly or periodically performing that service, isn't he, without being called in?

A. I think as a general rule the Travelers make those inspections but I am not informed that the average company does.

Q. You have got a pretty good notion that those in the group I mentioned by name this morning aim to do it and have got the staff to do it?

A. I would entirely side-step any suggestion of what our competitors do. My private opinion might not be either accurate or complimentary.

Q. On page 533 day before yesterday you were recorded as saying, in connection with a Workman's Compensation [fol. 624] policy, covering solely in Virginia, an agent who produced that contract would take pleasure in pointing out to the assured, on renewal of the policy, the reduction in the rate procured due to favorable experience and added that in order to get that favorable experience agents have inspection and claim service discussed rather frequently. Again, you will admit the Travelers does that, not only for Mr. Tabb and its other one hundred and odd agents in Virginia, but for these non-resident agents and brokers that have risks of that type in Virginia as well; is that correct?

A. Yes, I have no doubt that the Travelers gives the same service to all policy-holders, regardless of where the policy may be written.

Q. And that is going on without your having them do it at all? They do it, don't they, whether you have them do it, or not?

A. They do it to some extent but I again state that that extent is often very much increased by the requests of the local agent and his personal contact with the risk.

Q. Don't you know, Mr. Tabb, and frankly admit that Mr. Murphy has a card on every risk and that the regulations under which he works provide for periodic inspections of that risk and notation on his records of findings and recommendations and the assured gets those recommendations and I think you get copies of them right straight along all the time?

A. Those recommendations usually pass through my office to the assured and not direct, and while you are entirely correct in stating periodic inspections are made, that illustrates my point exactly. We give more than periodic serv- [fol. 625] ice. We frequently send the inspectors for more inspection. For instance, a boiler is inspected once a year. We very often have them inspected two or three times at our own request and on our own initiative.

Q. And the Travelers Insurance Company doesn't write boiler insurance; the Travelers Indemnity Company does?

A. Well, that is the same thing. It is all owned by the Travelers Insurance Company. We regard it as all one.

By Mr. Staples:

Q. Does it have the same engineering force?

A. Yes, sir, the same engineers.

By Mr. Christian:

Q. They always inspect the risk as soon as it comes on the books, don't they? As a matter of routine a new risk is inspected by them?

A. Yes, sometimes not for several weeks or months, depending on how busy they are and there is no fixed date of inspection.

Q. But there is a fixed rule to inspect new risks in the due course of business?

A. Certainly, yes, sir.

Q. And while you might call up Mr. Murphy and ask him for it this week instead of next week, if you hadn't called him up he would have gotten around to it shortly, wouldn't he?

A. He would, but my reference was to more inspection and not to the one inspection.

Q. When you call him up and ask him to inspect something, as a rule it is because some doubt has arisen as to the classification or as to the correctness of the computation of the premium isn't it?

[fol. 626] A. Not exclusively.

Q. I mean usually.

A. Well, In the case of boilers it is more because something has happened that makes me or the assured jointly feel that more inspection service is necessary. The same applies to elevators and all.

Q. That is a relatively trivial part of your business, the boiler business?

A. No, I wouldn't say so. We write quite a substantial boiler and machinery business.

Q. All 125 agents collected $18,000.00 of premiums, I notice in 1935 from this book. I will ask you to refer to page 285. Is that correct?

A. I assume it is correct as it appears in the Virginia Insurance Report for 1935 but you are going a long ways back.

Q. It is for '36, covering the operations for '35.

A. But you are going a long ways back and boiler premiums have been very greatly increased since that date.

By Mr. Christian:

Q. You were speaking about your making those requests for inspection service and that you got the inspection reports instead of the assureds getting them. Are you able to say whether ordinarily, among the agents of your company and others, that is true rather than that those inspection reports go to the assureds?

A. It is done both ways. I don't know what the custom of other companies is because I have had no opportunity of investigating that.

[fol. 627] Q. You know that it is only because you happen to have them sent to you instead of the assured that they are sent to you, don't you?

A. I guess the company understands my general wish for them but the policy is to use the agents to get compliance with inspection requests.

Q. The policy is to send the reports to the assured, however, unless the particular agent, who is the producing agent, asks otherwise?

A. If that is done a duplicate is always sent to the agent so he can follow up and the company usually writes the agent to find out if the inspection requirements have been complied with.

Q. Mr. Tabb, you know that is not so, that the company has got to write you to find out whether the recommendations of its inspector have been complied with, because it has got Mr. Murphy and eight other engineers that it can send there itself and find out, hasn't it?

A. Yes, but that involves substantial expense, Mr. Christian, and the company writes me for a report on these inspection requirements which costs them nothing. Of course, if I am unable to get it they usually wait, unless it is an imperative suggestion, until the next inspection to see whether it is done or not, but anything of real importance they follow up with the agent.

Q. Your assertion is that if Mr. Murphy says that a certain vat isn't properly guarded and that it ought to have a

guard put around it to keep the workmen from falling in, the Travelers' Hartford Office, after communicating that [fol. 628] recommendation to the assured, sits down and writes you to ask you whether that vat has been changed; is that correct?

A. Yes, sir, usually.

Q. And your assertion is that it is not a practice for Mr. Murphy to go and look at it and see whether it has been fixed to his satisfaction?

A. Not immediately, but if they get no results from me I think they will follow it with another inspection visit.

Q. They make another inspection anyway in another three months in the case of some of the risks and another six months in the case of some and another year in the case of some, don't they?

A. That is correct.

Q. And if they thought it was very important to them, they could make the inspection in another week, couldn't they?

A. They could, but they don't usually do it.

Q. They are more interested in whether a condition of danger is remedied than you are, aren't they, in that they have got to pay the loss if that condition caused a loss?

A. Of course, they are more interested from a payment of a loss standpoint but they look to me to insist and assist very materially in getting the recommendation carried out.

Q. And the assured has got just as much interest in getting an unsafe condition remedied as you have too, hasn't he, in that his premium will be increased if an unsafe condition causes excessive loss experience?

[fol. 629] A. He should, Mr. Christian, but you would be amazed at the resistance of, I will say, the majority of operators of plants to safety measures which might involve expense.

Q. You say a producing agent is very helpful to the company in persuading the assured to follow the engineer's recommendations at times?

A. Yes, because the agent indicates, if he doesn't tell the insured, that the continuance of his insurance is based on that, and then he, of course, goes into many arguments to show the insured that he should comply with the recommendations.

Q. And these recommendations often involve the spending of right much money. For instance, in this tobacco risk

there was a recommendation sometime ago involving an expenditure of right much money, wasn't there?

A. Yes. Practically all of them involve some expense and that varies according to the extent of the recommendation and the nature of it.

Q. Would it be reasonable to suppose that the producing agent, who is in contact with the officers controlling that expense, would be the best man to work on that officer to get him to authorize the improvement?

A. Yes. Experience has evidently proven that the agent gets results better than any other source.

Q. And if the officer who has the authority to authorize or withhold authorization of the expenditure, lives in Richmond, then you would be conveniently situated to get him [fol. 630] to do that? If he lived in New York you would either go to see him in New York or write him in New York, wouldn't you?

A. Yes, but usually with matters of safety the local manager has sufficient authority to proceed.

Q. And usually his superior in New York has sufficient authority to make him proceed if he is unwilling to do it, doesn't he?

A. I think so, but I believe a president, living in New York, would authorize a resident at the plant to use his judgment rather than the president in New York using his well-established superior authority.

Q. I mean if that man were recalcitrant and wouldn't do what the safety engineers said to do, which was patently a thing that should be done, the president could make him do it, couldn't he, if he were advised of it?

A. I presume so, but the local man would be mighty foolish if he put up his judgment against his superior in New York or caused a violent rupture with the insurance carrier on the ground.

Q. I thought you said ordinarily they were very unwilling to do it and that you had to work on them to make them do it, that I would be surprised.

A. I said that you would be surprised at that unwillingness, referring more particularly to locally owned and controlled plants, but I think the same general condition would apply to national plants.

Q. Do you remember speaking about this risk that you have in association with a broker which you described as a

[fol. 631] tobacco risk when Mr. Staples was examining you, either yesterday or the day before?

A. I may have but I don't remember, but proceed with your question. I think it would probably bring it to my mind.

Q. I was wondering if the tobacco risk we were discussing today and the tobacco risk you were talking about on that other occasion were the same one.

A. They might have been, but I would have to refer to the records to see if that is true.

Q. Have you got more than one tobacco fleet automobile liability risk of substantial dimensions which you handle in association with a New York broker and divide the commissions?

A. I don't recall but one right offhand.

Q. I got the notion from what you said the other day to Mr. Staples that it was very imperative that an agent contact the operators of any plant and undertake to get the operation improved from a safety standpoint instead of leaving that to the claim department people and the engineering people of the company, but I did not understand precisely why it was that an agent could do that better than the claim person or the engineering person, and I would like you to explain to me why it is that the average of these hundred and odd Travelers agents around Virginia could do that better than a man like Mr. Murphy or Mr. Davison and, therefore, why it is imperative that one of these hundred and odd agents should do it rather than Mr. Davison or Mr. Murphy.

[fol. 632] A. The reasons are perfectly simply, from my long experience in such matters. The most expert engineer does not claim to have any great power of using his facts to bring results. He is not a contact man. He has difficulty in most cases getting to the final authority of a corporation or firm. The agent has been in such contact to get the business. The rates to his client are largely dependent on accident prevention. The insurance company further realizes that the agent has a proprietary interest in the premium and, therefore, puts it squarely up to him to do everything necessary to retain the business and to make the risk safe for the insurance company. There is a great and close interest between the insurance agent producing the business and the company assuming the liability. The inspector or engineer is simply an incident thereto and is

often almost tongue-tied when it comes to arguments with heads of big corporations.

Q. And you reaffirm today that this producing agent who got the business and who got the contract from the president is about the only man who can get the president of a corporation to address his employees on the necessity of carefulness?

A. In the majority of cases I would say yes. Sometimes you might strike an engineer who can perform this service but I don't think the companies employing such inspectors feel that that is an essential part of their duties.

Q. Suppose a producing agent got this contract from the head of a big corporation which enables him to have an [fol. 633] entree to see him and that the chief engineer of the company or the chief adjuster of the company, being tongue-tied and also not being able to get an entree to the president, can't talk to them, and suppose that president lives in New York and the risks are scattered around in 20 or 30 states, is it your idea that a local agent of the Travelers in each of those 20 or 30 states has that same more convenient opportunity to see that president in New York and that same better entree to see the president than the head engineer of the company in New York would have or the head claim man in New York would have?

A. I don't want to suggest such a foolish proceeding as to have an agent from every hamlet in Virginia go to the headquarters of a New York executive to talk these things but I do say that the most prominent agents connected with the risk in the state would usually be empowered to represent the group and make their appeal. I again, though, Mr. Christian, refer to my answer preceding that in the case of local plants there is usually some superintendent or head man who is empowered to discuss these things and act on them without reference to the president or other executives in New York.

Q. Do you think it is more efficient for these companies to be guided by the advice of whoever happens to be the local agent in some one particular state as to what safety measures it shall adopt in that state and be guided by the varying advice of whoever happens to be the local agent in the next state as to matters within that state, and so on, around the [fol. 634] country, or do you think it would be somewhat less troublesome and somewhat less expensive of the salaries of the important employees, and somewhat more conducive

to uniform efficiency to have all of that done country-wide at one time, and, through a dealing between one officer of that corporation and one insurance agent?

A. Well, I have not, in my experience, had any far-reaching group of safety measures that were so vitally important in many plants to necessitate going to the president. I would say that these matters are usually handled by the local people and in Richmond, for example, we have awards made by the Safety Council of Richmond on superior safety measures and, in the interest of such a local owner, we can get results oftentimes when purely a plant consideration in New York might not be so effective.

Q. If I am the owner of a fleet of trucks that carry my gas and oil around in Virginia and I have got another fleet of trucks carrying my gas and oil around in North Carolina and one in West Virginia, and so on, I would ordinarily have the same kind of trucks and pretty much the same kind of rules and regulations governing these drivers and the trucks would have pretty much the same routine, would they not?

A. They would but the human equation of the drivers is, in my judgment, and I think can be easily demonstrated to be the controlling factor. If we have a handsome silver award to present to the Richmond drivers and they don't have it in North Carolina and West Virginia, I am satisfied that my bringing that to the attention of the drivers in Rich- [fol. 635] mond would have very great effect in their more careful driving of the same class of trucks.

Q. The same way a man who is making cellophane and has factories in each of a dozen states, or more, while he wouldn't be blind to the improvements in the types of machines in making cellophane and he would put in improved machines as they came along, and each time he built a plant he would strive to have it laid out a little more efficiently than the preceding plant, there would be a general conformity of the machinery and the processes in all of those plants, wouldn't there?

A. There would be, but the same human equation enters into every one of these machines that is humanly operated.

Q. It is also true, isn't it, that if I own a lot of theaters all over the country, in general I have a house with a box office in front of it where the tickets are sold and one or more gates of ingress with a ticket-taker there and one or more gates of egress, and pretty much the same kind of

seats and screen and projection room, and so on; isn't that correct? That is fairly uniform in all of my operations?

A. It would seem so from that simple statement but the facts show that where safety work is done the same identical equipment will not produce accidents and where that Safety work is not done they will produce accidents.

Q. The same way, if I am the owner of the Atlantic and Pacific Tea Store or the Pender Company or the Kresge Company or the Peoples Drug Store, there is a pretty general similarity between my various units in the various [fol. 636] states, in the way the soda fountain is rigged up and the way the prescription counter is rigged up and the way the store looks to the user, is there not?

A. I think my preceding answer covers it and it is clearly shown——

Q. I am asking you, first, isn't there *is* a general similarity of units.

A. Yes.

Q. In physical equipment and method of operation?

A. Yes, but safety work can change the picture entirely.

Q. If I need or think I need $20,000.00 and $200,000.00 public liability insurance in North Carolina, the probability is that the same things will make me think I need it in Virginia; isn't that true?

A. Yes, sir, but you will find that the live agent in Virginia increases those limits, whereas, with no such effort in North Carolina, you might allow the limits to stay the same.

Q. Do you think it is likely that one of these live agents out of the 125 that the Travelers has in Virginia, the average one of them, is liable to make the Standard Oil Company of New Jersey, for instance, carry more liability insurance on its trucks that it uses to carry oil and gas around the state, at the same time that the Standard Oil Company, not having the benefit of these suggestions from one of these agents in West Virginia or North Carolina, might go along with the same limits it has got over the rest of the country on that sort of protection? Is that the inference you wish to have the court draw?

[fol. 637] A. It is not only my inference but my considered opinion that a live Virginia agent can persuade the Standard Oil Company to charge the limits of its Virginia coverage if he can point out some local ordinances or laws in

Virginia that make the hazard greater and justify the difference in protection.

Q. Do you know of anything that is true about Virginia that would justify one of these Virginia agents telling the Standard Oil Company that it ought to have larger amounts of liability protection on its Virginia trucks than those in any other state in the United States?

A. I think that difference in limits is often carried in different states for apparently the same class of operation. I do not wish to mention any states that might put me in the position of casting a slur on a sister state of Virginia, but I happen to know that in certain states it is easy to convince an insured, however large and wealthy he may be, that his limit should be very much increased in that particular state.

Q. Is that state Virginia?

A. No, sir, not especially.

Q. You don't know of anything about Virginia laws or ordinances that would give you a good argument to make that you ought to have either more or less liability insurance in Virginia than in the District of Columbia or Maryland or West Virginia or North Carolina on a fleet of automobile trucks engaged in delivering petroleum products?

A. I will make this statement, that I think our friends in the north feel that where trucks are driven by colored men [fol. 638] it is very essential to have very adequate limits.

Q. On page 534 you are recorded as having said, "In many cases we have to work hard on a big man, the president of a corporation, to interest him in safety and accident prevention. I know of cases where we have worked for years to get a president to address his employees on the necessity and imperativeness of carefulness and other things that he can personally impress on them more than any agent or inspector and when we get a president to address his employees, we have gone a long ways in accident prevention and this is peculiarly the duty of the insurance agent handling his business. In fact, the resident agent is about the only man that can get a president of a corporation to do that job." I want to ask you why you put that word "resident" in there?

A. I was more specifically referring to the resident of a state in which the plant is located.

Q. I want to ask you why it is that, if the president lives in New York, an agent who is resident in Virginia where the coverage is, is about the only man who can get the president

to do that job, and I also want you to tell me just how you would go about it if you were that resident agent, exercising your function to get him to do that job and knowing you are the only man who can do it?

A. I don't think I made the categorical statement that I was the only man that could do it if I was the agent on the risk, but I think I would have the best chance of doing it and, if he was a resident of another state, I believe he would listen to me with great attention if I had my facts well [fol. 639] marshalled and lived where his plant operated and knew the way in which his plant was regarded both by employees and the public.

Q. Would you write him a letter or would you go to New York to see him?

A. I think I would be more likely to go to New York to see him. Of course, that would depend on the seriousness of the situation and somewhat on the size of his business.

Q. Wouldn't it be easier for his resident agent, who was the real producer of that business and who was in New York, to talk to him then for you, who, so far as he is concerned, is a mere countersigner in Virginia, to go up there and talk to him?

A. I think that as a matter of good business his agent in New York should be able to get the result desired.

Q. Then why do you say here that the resident agent, whom you have defined today as the resident agent in Virginia, is about the only man who can get the president of the corporation to do the job if the president is in New York?

A. I have more reference, of course, to Virginia corporations and president or executives located in Virginia.

Q. So you don't mean to say that an agent like yourself would be the only man who could get the president of one of these foreign corporations that had placed its business through a New York broker or agent to do that job, do you?

A. No, I don't mean to say I would be the only person who could perform the act.

[fol. 640] Q. Don't you recognize that the main part of this dispute that is now in court in connection with which you have given testimony relates to that sort of business rather than business where the president lives in Virginia?

A. Certainly, and I think the association as intended under the Act gets that service from the local agent through his broker to the proper source and, therefore, increases

the value of the insurance contract to the man who pays for the premium.

Q. And you think it is worth to an assured, if his annual premium is $10,000 a year and the commission on that premium is $2,000 a year, paying you $1,000 of that $2,000, in addition to paying the outside-of-Virginia producer what is reasonable and proper, in order to enable you, by whatever processes you adopt, to lend your services in getting the president to make addresses when you think it is necessary and do other things that you think are helpful to that assured; is that correct?

A. I think that experience will prove that it will be but he does not pay that $1,000 in addition to anything he is now paying. The assured or policy-holder pays no more and, therefore, anything that he gets of advantage is that much to the good for which he pays no additional premium.

Q. When you say it is not going to cost the assured any more money for Tabb to get the thousand dollars that Tabb has not heretofore gotten, and it is not going to cost the company any more for Tabb to get that thousand dollars, then we come to the point where you think the thousand dollars is just going to fall on the non-resident agent or [fol. 641] broker alone; is that right?

A. Yes, but I think that he will get something in return, such as local service, which he may not have gotten before and that will, in turn, save some of his traveling expenses and other expense which will go to offset in part the apparent loss. He will also have a local agent associated with him which usually results in getting other lines or more business from the assured.

Q. And that association is something, if the assured wanted that non-resident agent to do so or to have and thought it was advantageous to the assured that the non-resident agent or broker should have, he could get without the help of this law by the simple expedient of telling that broker to associate Mr. Tabb with him and divide the commissions with him, couldn't he?

A. Yes, he could do that.

Q. And it wouldn't cost him a cent?

A. Sure.

Q. And the reason that Mr. Tabb isn't getting that thousand dollars now, without the help of this law and never has gotten it, is that the assured hasn't wanted Mr. Tabb to have it. Isn't that right?

A. He has gotten it in many cases, and I wouldn't say that the assured doesn't want him to get it. I think it never has been brought to any degree to his attention.

Q. And that brings us back to what we discussed yesterday when you admitted that in many cases you had brought it to their attention and unsuccessfully attempted to get them to secure that division between the non-resident agent [fol. 642] or broker and yourself and they have refused to heed your wishes just as in some cases they have, as you claim, heeded your wishes? Isn't that correct?

A. Oh, yes. We don't get every risk we solicit.

Q. And if you knew of anybody right now who had a big amount of insurance premiums covering in Virginia which you thought you could get to take away from the non-resident broker or agent, with whom he was placing it, and give it to you or you thought you could get him to make that non-resident agent or broker divide up with you, there is no ethical reason why you shouldn't go and try to get that done, is there?

A. None whatever.

Q. And there is every reason why an aggressive, enterprising gentleman like yourself should go right ahead and do it, isn't there?

A. Well, there are some considerations where you would not do it because largely you would feel that other interests would not justify the risk you would take.

Q. You mean that you might make that broker mad and he might take some other business away from you?

A. Largely, yes.

Q. You said if you couldn't get the president to come to Richmond to make a speech you might try to get him to write a letter to put on the bulletin board of the plant. As I understand it, you think that a Virginia agent could get a letter from the president of a foreign corporation, with [fol. 643] its headquarters in another state, to put on a bulletin board in Virginia better than the producing agent in that other state could get that letter; is that correct?

A. I think there are circumstances under which that would be a fact but I want to add that in handling these large interstate risks to which Mr. Christian has referred I again say that usually some man in the plant, such as a superintendent, has enough authority to listen to your argument and his address to the employees carries largely the authority of the president.

Q. Would there be any propriety in the engineers or claim department people asking that officer to whom you have just referred to make that address?

A. No impropriety whatever. They are working to the same end as the agent.

Q. Do not these big corporations about which we have been speaking usually have engineering and safety departments of their own or official personnel, a part of whose duties is the safety problem?

A. Yes, I imagine the large ones do, but I don't think they see safety measures in just the same light as insurance agents and insurance inspectors, engineers and claim people.

[fol. 644] Q. Don't these corporations with multiple locations and activities in various states usually have a definite policy, either to follow the recommendations of the safety engineers or to submit those recommendations to some other authority and then decide whether to follow them or not, or is it your conception that it is just a haphazard thing whether the local people will follow or won't follow recommendations of safety engineers, and the persuasion of the local agent will determine the course that is to be taken?

A. I don't think they have a haphazard policy but my principal reference is to the human equation, such as appealing to motor car drivers and others in hazardous positions who may be impressed by a so-called disinterested party.

Q. Mr. Tabb, there is a Travelers policy form here which is a specimen of a boiler or machinery insurance policy which we sent upstairs just now to get as a result of a discussion off the record and I notice in that form that, upon the discovery of a dangerous condition with respect to any object, any representative of the company may immediately suspend the insurance thereon by written notice mailed or delivered to the assured at the address of the assured as stated herein or at the location as stated in the schedule of the object to which the suspension applies. Is my understanding correct, not being informed about insurance matters and you being informed about them, that one of these inspectors, on discovering one of these conditions referred to in that sentence, would be authorized under that language to call on the assured to then and there remedy the

condition, and, upon refusal, would have authority to suspend the insurance?

[fol. 645] A. As a matter of fact, I have never known an inspector to take that action without first consulting me as agent, if I happened to have written the policy. I have no doubt that the inspector could take that action, but common usage, as I have said, requires the agent to be called in to do it.

Q. About the matter of these inspectors and the claim people being tongue-tied, am I mistaken in my impression that it is the day in and day out duty of a man like Mr. Davison and his immediate subordinates and of a man like Mr. Murphy and his immediate subordinates to address conferences of working men, drivers, machine operators and the like?

A. We frequently call on them to address them.

Q. Do they frequently make those addresses?

A. They do.

Q. But you say that notwithstanding the fact that they are frequently making those addresses, they remain too tongue-tied to put the thing over?

A. I did not say that they were tongue-tied. I said they are often tongue-tied when it comes to an interview with the president or high officials of a corporation, which is a very different status entirely from addressing employees on a mechanical question with which they are thoroughly familiar.

Q. Don't they see these local plants and make their inspections usually in the company of the Master Mechanic, or some other senior operating man, at the local plant?

A. They frequently do.

Q. Don't they get to know those people?

[fol. 646] A. But not uniformly. They frequently do; but not uniformly.

Q. Isn't it entirely the customary thing, when the company inspector goes to a plant, that the Master Mechanic or some other similar man takes him over the plant?

A. That might be for the first visit but I don't think for a subsequent visit that would be followed.

Q. Is it your idea that they would be too tongue-tied to talk to local superintendents as well as to talk to the president?

A. I again say that I did accuse anyone of being entirely tongue-tied. It was an expression simply to illus-

trate what I had in mind with most types of experts when it comes to addressing big men in the financial world.

Q. Don't you see that Mr. T. Garnett Tabb is accustomed to addressing big men in the financial world, to the extent that that concept hasn't been exploded in the last five or six years that there are such things, but that that is not true of the 125 Travelers agents scattered around in the rural districts and lesser communities of Virginia?

A. I take it that men who are qualified sufficiently to represent an insurance company and who secured the risk in question have enough sense and personality to present the subject of safety to the head of a business.

Q. You are selling insurance contracts, as I understand it? That is your occupation, isn't it?

A. That is not all of my occupation.

Q. But that is where you get your revenue, isn't it?

[fol. 647] A. Yes. The results are that, but I am very much interested in safety work and all the other things that go with the insurance business.

Q. But your primary function is underwriting for your company and selling for your company and out of that grows this servicing that you are speaking of. Isn't that right?

A. Correct.

Q. The primary function of Mr. Murphy is to sell only safety, isn't it?

A. I don't know that I would term it "sell safety". His primary duty is to discover hazards and dangers and report them, both to people in immediate charge of machines, to the company and, either directly himself or through the company, to the agent who produces the business.

Q. But he is selling safety just the same way you are selling safety, isn't he?

A. No, he doesn't sell safety to the parties who pay for the whole works. He is more the check desired by the company than he is to argue or present or in any way enforce safety regulations.

Q. And you think you would be better qualified to explain to my friend and your friend, Paul Miller, at the Tredegar Company why it was that a certain method of making car wheels or horseshoes or projectiles wasn't as safe as some other method than Mr. Murphy would be capable of explaining that to Paul Miller? Is that right?

A. No, I would take the written report of the inspector

and if it was a very complicated thing I might take the inspector with me.

[fol. 648] Q. And if it was a very complicated thing a person like you or myself wouldn't understand it at all, would we?

A. I wouldn't go so far as to say you wouldn't understand it at all, but I don't think that is pertinent. We would take the statement and if Mr. Miller or any other person asked us questions of a technical kind which we couldn't answer we would go and get informed and come back to see him. My whole answer to this series of questions is that the agent is supposed to have the contact and he is supposed to have sense enough to use information furnished by the inspection department of the company to present it intelligently to those who can enforce it and thus increase the value of the policy and enhance the grip of the agent on that particular risk.

Q. But you further make the point, as I understand it, that you could tell Paul Miller, for instance, down at the Tredegar Company, better than Mr. Murphy could tell him why he ought to change a certain operation in the making of horseshoes or projectiles or car wheels or angle bars or spikes or whatnot? Is that true?

A. I know it is true that I can couch the request in language and in attitudes that frequently go much further than the technical ability of the inspector, whoever he may be.

Q. You think that is so of the generality of the Virginia insurance agents?

A. I have no knowledge of how far they can go and anything I might say might be a reflection on them or it might be too complimentary. I am only testifying here under oath to my own personal actions and the rest of it would be simply a matter of opinion.

[fol. 649] Q. And you also think that you could do that presentation better than a man like Mr. Davison who has spent his life in handling claims alone and hasn't had to bother with safety matters or with selling insurance either; is that correct?

A. It is entirely correct. I claim the ability to present the subject better than both of them put together.

Q. But again you don't claim that for the generality of agents? You just claim that for T. Garnett Tabb?

A. That is the only person I am accountable for and I am giving what I think is in my power.

Q. When was the last time you have been to a safety conference and enlarged on safety from a human standpoint in an address to the drivers of a fleet composing 30, 40 or 50 drivers?

A. I don't know just when but I would say a year.

Q. Before you went to that meeting and made that speech how long had it been since you had done it?

A. It is very hard for me to accurately state this because we have talks with the officials and they frequently prefer to handle it themselves. This is not a daily occurence and more largely concerns a risk when its experience is going bad.

Q. Was that meeting you speak of that you said you would estimate as having taken place a year ago the tobacco risk about which we have spoken or was it some other risk?

[fol. 650] A. No, I have never addressed a tobacco risk for the great reason that their experience has not been so bad and their season is short and their drivers are widely scattered.

Q. Were Mr. Murphy or Mr. Davison, or any of their subordinates, at that meeting a year ago that you are talking about?

A. Yes.

Q. Did they make speeches, too?

A. I think so. That is the purpose we take them there for.

Q. When was the last time you have been to a local plant here in Virginia and had all the employees gathered together and you have addressed them about safety?

A. I can't remember the exact date. I haven't found it necessary to do it in a long time.

Q. A good many years?

A. I would say so.

Q. On page 535 of this transcript it is shown that this service costs you money. You say it is very expensive. What do you spend that money on to perform that service?

A. The "Very expensive" statement refers to the expense of the non-resident broker if he was required to come to Virginia. It didn't refer to my expense. It was his expense, if you will read the context.

Q. Your idea is that a Washington or Baltimore broker would find it more expensive to come to Alexandria than you would find it to go to Bristol or Roanoke; is that right?

[fol. 651] A. No, because I referred to the agent in the town where the service was to be rendered.

Q. Is there anything in this law about which we are disputing that says that the countersigning Virginia agent has got to live in the town where the service is to be rendered?

A. My judgment is that if this law is approved the same general rule that applies to fire insurance companies will apply in this case, which is to say that if I sign a fire policy covering ten plants in different cities in Virginia I only receive commissions on the Richmond part of the premium and in the other nine cities where plants are located the commission goes to the agent in that particular city and, therefore, if there is any service to be rendered in Alexandria or Danville or Clifton Forge the agent located there who receives the commission on that part of the premium will render the service.

Q. But we agreed yesterday, didn't we, and I hope as we did so we won't have to go over it again, that under the rules of the Underwriters Association or of all of these local boards that business of dividing it up among the agents in various localities is pretty well imposed on the fire insurance business and there is nothing similar in the casualty and surety business yet which does impose that custom on that business? Is that correct?

A. Yes, I don't know that the casualty companies have made any rule regarding it at all, but I think the agents will ask for that rule and the companies would be very foolish, in my humble judgment, to not do it because by giv-[fol. 652] ing the commission to the agent where the plant is located they encourage him and build up his business.

Q. I want you to bear in mind what you said about dividing up with agents in the various localities because I may have some questions to ask you later as to whether you are dividing up commissions at the present time with agents all around Virginia on your casualty business where it covers all around in Virginia. If you prefer, however, you can elucidate that point now.

A. No, we don't divide up with any agents unless we find it necessary to call them in to get service and I can't remember any case of that kind. There is no law requiring us and there is no rule of the casualty companies. I am simply saying that the fire business is based on that. If

I write a fire policy covering in Virginia at many points I have to divide the commission with the agents where that fire risk covers.

Q. But you also said, I thought, that if this law stands up that same thing is going to come into the casualty and surety business.

A. I said I presumed that would be the ultimate end.

Q. What I want to get at is this: This law doesn't make any change in the legal regulations which are imposed on Mr. Tabb as to whether he shall associate other Virginia agents with him or shall not associate other Virginia agents with him when he produces some casualty or surety business in Richmond that covers in other parts of the state. [fol. 653] Why, therefore, should you presume that hereafter the agents are going to come along and request the companies, and perhaps request all agents also, to change the custom you now follow in the casualty and surety business and adopt your fire custom?

A. Well, my surmise is that this law is aimed largely to make uniform all lines of insurance written in Virginia. Of course, if a Virginia agent produces a risk and the company has no rule regarding division with other Virginia agents, it would then be up to the Agents Association to say whether they would adopt a different rule governing its members, which would be purely an agent's rule and practice and the companies would probably have no objection to anything we did with the commission as it would not concern them.

Q. The agents have not seen fit, however, up to the present time or as an incident to their taking that action of February 13th, to adopt any such rule, have they?

A. No, they haven't discussed it because they have got one thing at a time to do. If the law is not passed as constitutional, there is no use considering other out-croppings from the law.

Q. If the coverage is in 20 or 30 Virginia cities or counties, there ought to be 20 or 30 separate policies, separately countersigned in each of those localities, as is the case in the fire insurance business?

A. It is not the case in the fire insurance business. I have tried to point out to you that one countersignature is [fol. 654] sufficient and the company simply divides the premium up and pays to each agent the commission on the part of the premium that applies to the risk in each locality.

Q. And you deem, as I understand it, that this law is designed to make the casualty and surety companies do the same thing?

A. I don't know that the law is designed to do that but I think the practice set by the fire insurance companies, which are largely parties to this case either directly or through their subsidiaries, would find that that process was the most sensible and would see the actual results of the law carry the greatest benefit to the greatest number.

Q. But haven't we agreed, Mr. Tabb, and I again apologize to you for taking up so much of your time, that the fire insurance companies in their underwriters association and the fire insurance agents in that local board have imposed that on the fire insurance business by rules in existence for several generations and that those rules have got to be changed to get away from that in the fire insurance business. Haven't we agreed to that?

A. No, sir, I have not.

Q. You mean to say those rules existed in these local boards?

A. I said they did exist, but you have added a lot to that. I don't know how the rules came about and I don't know about the reason for them. They are in practice and have proved satisfactory.

Q. You know that the Travelers Fire Insurance Com-[fol. 655] pany is bound to all its agents and to all its associates in the Underwriters Association to adhere to those rules, don't you?

A. They are willingly bound to it. They didn't have to be.

Q. And they have been so for several generations of time?

A. Not the Travelers Fire. They are not a generation old, or much more.

Q. Are you able at the same time that you remain a member of this Richmond Exchange of which you were the first president, to continue to represent the Travelers Fire if the Travelers Fire stops adhering to those rules or won't you be obligated either to get out of this exchange, of which you were the first president, or stop representing the Travelers Fire?

A. I am a little bit doubtful about what rule you refer to.

Q. I am talking about the rule under which the agent in the locality of coverage must get 10% of fire insurance premiums as his part of the commission.

A. I don't think their failure to do that would constitute an absolute reason for resignation of Travelers agents from the association. It might eventually lead to that as a matter of common interest among the agents.

Q. There would be discussion and consideration shown in attempts to negotiate the difficulty, but, under the regulations, didn't we agree yesterday that you weren't supposed, as a member of the local board, to represent a company that didn't conform to the board rules?

A. Yes, sir, I did.

[fol. 656] Q. And therefore, subject to anything that might ensue from a discussion and the making of an exception, what I say is true, isn't it, with that limitation?

A. Yes.

Q. In your discussion just now I got the impression that you had some knowledge that the fire insurance companies were in this litigation. I assure you that they are not named among the plaintiffs and, unless Mr. Staples objects to my testifying and prevents me from doing it, I will say if they are going to pay me any part of my fee I don't know anything about it, but if they are in the litigation and if I am really working for them, I would like to know it. So I will ask you to state in the record why you think the fire insurance companies are in this litigation.

A. I didn't say that they were in the litigation. I said that fire companies owned by the same stockholders or the same general interests were in this litigation.

Q. Do you mean by that that most of the stockholders of these plaintiffs are citizens of the United States and most of the stockholders of the fire companies are citizens of the United States and that they are all drawn from a class of people that have got money and investments and there would probably be a lot of duplications of stock ownership? Is that what you mean?

A. No, sir, I mean that the casualty companies who either own or are affiliated with a fire company, are parties to this litigation.

Q. In some cases.

[fol. 657] A. In several cases that I can mention.

Q. And they are in the cases of what you would call groups that write all lines?

A. Not all lines absolutely but write casualty and fire. They are affiliated companies. I should have used that word.

They are really owned companies. They are not exclusively affiliated.

Q. Is my understanding correct then that the witness has knowledge on the basis of which he thinks he may fairly present it to the court as a truth that the fire companies would like us to win this suit so that they can get out from under this custom we have been talking about?

A. I have never heard the slightest indication of any such desire. In fact, I understand that a number of casualty companies are not even sufficiently interested to take part in the suit.

Q. I am not talking about whether there are some casualty companies that are not sufficiently interested to take part in this suit and as long as you have introduced that topic we will pursue it further in a more appropriate moment. I want to know whether I am correct in my understanding of your testi[illegible]y that you would have the court believe that the fire companies want the casualty companies to be successful in this suit? You said they were behind it or connected with it, or something of that sort?

A. No, I didn't say they were behind it. I said they are connected with it because the same companies, parties to this suit, also own or operate fire companies and apparently are willing to continue the same method of division of com- [fol. 658] missions as they have done for many years on fire business.

Q. If they are connected with this suit apparently, are they connected with this suit to try to make these plaintiffs lose it or try to make them win it? What does their connection consist of?

A. I didn't say they are connected with the suit except the fact that they are either owned or controlled by companies that are in the suit.

Q. But you do not mean then, as I understand it, to infer on this record that you think the fire companies are sympathetic to the casualty and surety companies in this suit?

A. I have no means of knowing whether they are sympathetic or not sympathetic but I have never heard the least indication that the fire companies would like to change their present method of operation.

Q. Why do you try to make out like you think the fire companies are secretly helping us in this suit?

A. I did not so intimate.

Q. You didn't?

A. No, sir.

Q. I was interested to hear you say that there were a great many of the casualty companies that were not sympathetic to this suit and I think that is illuminating because I thought I understood you to indicate yesterday that there was some kind of monopolistic combine of all the casualty companies in favor of this suit and that the reason the casualty companies couldn't be made to conform to this fire insurance custom by the agents was that they were in a monopolistic combination that was too powerful for an agent [fol. 659] to oppose because they would all stand together and an agent who wouldn't bow to their will wouldn't have anybody to represent. Didn't you indicate that yesterday?

A. I did not, in no way, shape or form.

Q. You didn't mean to indicate the other day that the casualty companies were all standing together in this litigation?

A. I don't remember any such testimony on my part.

Q. Don't you remember my pointing out to you, when you made the claim, that the U. S. F. & G. wasn't a plaintiff in this suit that the Employers Liability wasn't a plaintiff in this suit and my disputing your claim that they were acting as a unit?

A. I will have to refresh my memory. I don't recall that.

Q. But anyway, your reflected judgment is that they are not acting as a unit, but that there are a great many of them that don't approve of this suit; is that correct?

A. That is my inference from there being so few of the companies parties to this suit as compared to the total casualty companies licensed to do business in Virginia.

Q. You said that one advantage this Virginia agent would have in Virginia where there was Virginia coverage over a non-resident agent in furnishing service is that he would usually be a patron of the assured. I take it from that you mean you would go to Lowe's Theater and you would buy a Coca-cola in the Peoples Drug Store and go to the five and ten-cent store and make purchases and smoke Chesterfields or Camel cigarettes and buy Esso or Sunoco or Amoco, and so on. Am I right in my assumption that is what you mean [fol. 660] by being a patron or do you buy wholesale from those people usually, you agents, by carloads?

A. I think Mr. Christian has used an absurd lot of illustrations, but I will say that even buying Coca-cola or Esso

or any other article is very often conducive to getting business. I recently heard that an official of the American Tobacco Company made quite a drastic statement in connection with this matter when he saw Luckies not being used on a certain occasion, but some other brand of tobacco, which illustrates forcibly to my mind that the question of patronage is a very important one.

Q. Can't the non-resident agent or broker smoke just as many Luckies as you can smoke if he is willing to subject his body to the ordeal?

A. Yes, but we are talking about agents of Virginia and they number, with their families and friends, quite a formidable army.

Q. I think you said that yesterday, Mr. Tabb. You weren't talking yesterday about getting business?

A. I thought I was talking about the advantage to the non-resident policyholder.

Q. Isn't it a fact that out of the total number of surety and casualty contracts with which an agency such as yours comes in contact, there are only those involving automobile fleets and workmen's compensation risks where there is a really substantial opportunity for servicing by the agent?

A. No, these are not the only forms of insurance that require service. Public liability and boiler and elevator and [fol. 661] every other line of insurance requires service. Some of these I have mentioned require more frequent service than either compensation or automobile fleets and involve more far-reaching considerations, more expertness in the insurance business and more work than either of the lines named by Mr. Christian.

Q. Mr. Tabb, do you occupy the position of the producing agent with reference to any casualty contract in which the assured has its principal office in Richmond, Virginia, and where the coverage under the contract is in a number of states other than Virginia, as well as in Virginia, and the form of coverage is public liability insurance covering miscellaneous improved real estate units such as residences, apartments, storebuildings and the like?

A. Yes.

Q. How many states does that particular contract cover in?

A. 14 or 15.

Q. They include Illinois, Michigan, Louisiana and various other far distant states, do they not?

A. I think so.

Q. Did you solicit that contract in Virginia?

A. Yes.

Q. Is the assured a Virginia corporation with its principal office in Virginia?

A. Yes, sir.

Q. Are the operations of the assured outside of Virginia controlled and directed by its principal officers with offices in and residing in Virginia?

[fol. 662] A. Yes, sir.

Q. Was the application for that contract completed in Virginia, including the preparation of the schedule?

A. Yes.

Q. Was the data used in the underwriting which entered into the making of the contract accumulated in Virginia. I mean by that were their records in Virginia from which you got the descriptions of the various buildings and the elevators in the buildings and the use of the buildings as apartments, hotels, stores, dwelling or what-not?

A. Some of it was and some of it was not.

Q. What part of that data did you have to go outside of the state to get?

A. Little, if any.

Q. Can't you omit that "little" and say you didn't go outside of the State of Virginia in order to do that underwriting?

A. I don't think I went out of Virginia to get any data.

Q. You know you didn't, don't you?

A. I am a little bit doubtful about one or two cases. I don't think I did.

Q. The officers of the assured who made the decision to take out this contract and the extent of the coverage to be afforded by the contract and the pieces of property to be covered by it were all persons with offices in Richmond and who resided here, were they not?

A. They were.

Q. Was not the entire transaction of procuring the con-

[fol. 663] tract, from the standpoint of the assured, planned and directed and carried out by it in Virginia?

A. Yes.

Q. I would like you to state to what extent and at the expenditure of how much time you and your associates in Richmond examined into this situation and discussed the

coverage desired and negotiated the provisions and terms of this contract with the representatives of the assured. That is to say, were you just talking about it to them for 15 minutes one morning or were you working on it for a week or how long?

A. We worked on it very, very frequently.

Q. Over how long a time?

A. I suppose off and on over a month.

Q. It took you several months then to get that contract up to the point where you had presented a contract for acceptance and it had considered all of the terms and conditions of the contract and stated the modifications which it wanted and you had been able to get the company to agree to those and the contract was finally in form to be delivered?

A. Right.

Q. And during that time you spent a rather substantial part of your time working on that case, didn't you?

A. Yes, I would say substantial. I don't know just what percentage.

Q. Did you have occasion to get the assistance of any of your partners or employees in working it out?

A. Yes, my employees, but not my partners.

[fol. 664] Q. How many different people in your office did one thing or another to help you write that business?

A. In the actual preparation and figuring and all, I would say three.

Q. Did they spend substantial parts of their time in the period of months in question in furnishing assistance to you in order to get that business written?

A. Yes, a right fair amount of time.

Q. When this contract came to be prepared was the contract prepared in Virginia?

A. I am a little doubtful about the original contract because we issue our own policies in my office. In this particular case I believe we had it issued in Hartford.

Q. When you say "We issue our own policies in my office", do you mean they are overprinted to bear the name of your agency?

A. Yes.

Q. What do you mean by being your own policies?

A. We are supplied with pads of policies of all kinds and we are a policy-writing agent with no connection with the branch office in casualty lines.

Q. That is always the case with a general agent, and frequently the case with agents who are not general agents, isn't it, taking the companies by and large?

A. It is in the fire business, but in casualty and, referring specifically to the Travelers, they have very few policy writing agents. Nearly all the policies are issued in Hartford or at the branch office in Richmond.

[fol. 665] Q. Of these 80 stock casualty and surety companies that are admitted to Virginia and which are foreign or alien companies, only some ten or twelve of them have branch offices in Virginia, according to Mr. Boswell's testimony a few days ago. That is generally correct, isn't it?

A. Yes.

Q. And as far as the other seventy approximately are concerned, without branch offices, they have many agents scattered around the state, licensed as resident agents who have full underwriting authority, subject to the general rules and regulations governing them, don't they, just like you do?

A. I think, from my observation, the great majority of them write the policies at the home office of the companies who have no branch offices in that state.

Q. Can you name me a general agent of the Fidelity & Casualty Company in Virginia, a general agent of the Employers Liability, a general agent of the Maryland Casualty, a general agent of the U. S. F. & G., or a general agent of any other prominent company that doesn't have authority to write policies? Casualty policies, I am talking about.

A. I am not absolutely posted on that point and what I said is just an impression.

Q. You know you can go over to Owen Wilson's office tomorrow morning and get your automobile insured and he can give you the policy in five minutes, don't you?

A. Yes, he is a policy-writing agent.

[fol. 666] Q. And you know that is so of Gibson, Moore & Sutton, don't you?

A. I would say this, though, that he can do that for probably one company he represents but not for all the companies he represents. For instance, I can't do it for the Fidelity & Casualty or the Aetna, both of which companies I represent, but I can do it for the Travelers.

Q. You are not a general agent of those two companies, are you?

A. No, I am a resident agent,

Q. You are a local agent?

A. Local agent or resident agent.

Q. Straus & Sons can do it, can't they?

A. No, I don't think so. All of their policies are issued in the branch office.

Q. Their casualty insurance policies?

A. Yes.

Q. With what company?

A. Travelers.

Q. Do not Straus & Company represent anybody but the Travelers among the casualty people?

A. No other casualty company that I know of with the possible exception of one other company for plate glass.

Q. Gibson, Moore & Sutton—can they write policies?

A. Yes, they write policies for the Maryland Casualty.

Q. Can DeJarnette write them for the Employers Lia-

[fol. 667] bility?

A. I don't know.

Q. I wonder if we couldn't settle this little uncertainty that seems to exist between us by your saying that you don't mean to state that it is a uncommon thing for general agents of casualty and surety companies in Virginia to have authority to bind their company on casualty risks. Won't you admit that?

A. I think they do have authority but the question we have been discussing is whether they actually issue the policy.

Q. Did you prepare the endorsements on the contract forms?

A. In connection with this public liability case?

Q. Yes.

A. Many of the endorsements we prepared.

Q. Was the rate to be charged determined by you or at the home office?

A. The rate was determined at the home office after negotiations by me with them as the risk covered in very, very many states.

Q. In what state and by whom was the contract issued?

A. By the company at Hartford.

Q. What did the company do with it?

A. Sent it to me for delivery.

Q. And you delivered it here in Richmond?

A. Yes.

Q. Where was the premium paid?

A. Richmond.

[fol. 668] Q. Where has the policy been held since its issuance?

A. By the insured.

Q. How long has the contract been in effect?

A. A number of years.

Q. How many different properties are now covered by it?

A. I would guess, without actually counting them or keeping that information in hand some 800.

Q. Upon how many occasions have the services of local commission agents in the localities of the coverage outside of Virginia been furnished to the assured under this contract at your request?

A. I think about twice.

Q. What did you get people to do who were local commission agents in other states?

A. They gave me information on which endorsements were made covering repairs or improvements or construction questions.

Q. You mean to say that the company either altered a building or repaired a building and that you got a local commission agent somewhere to tell you the nature of those repairs instead of your getting up and picking up your hat and walking two or three hundred yards and seeing the plans and seeing the bills and talking to the man that had the repairs made?

A. I did both, but the main reason for calling in the local agent was to get him to secure insurance from the contractor to cover both his interest and the policyholder's interest and I felt that they could do that better than I could by correspondence.

Q. You mean that the company which owned this store or apartment house, or whatever it is, was fixing to change [fol. 669] the thing and they told you they were fixing to do it before it had started?

A. And gave me the particulars, as far as I knew, at their home office.

Q. And then you decided that that furnished an opportunity to contact that contractor and get him to place certain insurance protecting his casualty risk while he was doing that work?

A. And the owner of the building, too, jointly.

Q. What sort of insurance did you suggest to your local correspondent that he get the contractor to place with him?

A. Both contingent and direct liability covering both interests, his own and the interest of the owner of the building.

Q. And that involved an additional premium payment for the protection of the liability of the contractor?

A. Yes.

Q. And the local agent got a part of that but he allowed you a part of it?

A. No, I don't recall that I got any commission in either case.

Q. Do you recall whether you did get any commission in either case?

A. I am positive I did not get any commission but while the contractor's part of the premium was additional insurance the main cause for my act was to see that the owner was properly protected.

Q. What did that local commission agent in the locality do for you?

A. To simply provide the proper coverage and report to the local representative of the owner on the ground so that they would know they were properly protected.

Q. You mean under the terms and conditions of this particular liability policy that the assured here in Richmond [fol. 670] wasn't protected for liability arising from the making of repairs?

A. Not repairs, but reconstruction. One case was, I believe, entire wrecking of the building and turning it into a filling station or something like that.

Q. What was there that you couldn't find out about what he was going to do sufficiently to enable you to write that rider here and give him that coverage?

A. It might have been possible but the principal expense and all the other items involved in the coverage were local matters and I felt that it could be attended to there better than I could attend to it.

Q. The people here that ordered the work done had it done on contract, didn't they? They didn't do it themselves?

A. No, they didn't do it.

Q. And they knew the name of the contractor, didn't they?

A. Oh, yes.

Q. And they had a copy of the contract, didn't they?

A. I think so. I know so.

Q. And the plan was laid out either by sketch or by scale of exactly what they were going to do?

A. Yes.

Q. And you could tell here what the contract price was just as well as the local agent in the locality could find out what it was going to be from asking the contractor, couldn't you?

A. Yes. I could get that information here, but in one case it was a cost-plus proposition and in that kind of a case I felt it was better to be handled there with the local representative of the owner and the contractor.

[fol. 671] Q. How could the local agent find out any more about the cost of the job if it was a cost-plus basis than you could find out? Do you mean there was no limit on what the cost should be?

A. I don't remember that there was any distinct limit but I presume that there was.

Q. Did the additional premium charge for the rider vary with the cost?

A. Oh, yes, it always does.

Q. Was that rider prepared before the work started and put on the policy, giving permission to do it?

A. I don't know whether it was actually prepared before the operation commenced but we bind it immediately on receiving notice from the owner.

Q. Under what terms was it bound? Was it bound in terms that you ascertained and determined here or was it bound in terms that were determined by that local agent?

A. It was bound on information they could get but subject to adjustment on conclusion.

Q. When you say "they" you mean the people here in Virginia?

A. Yes.

Q. And you bound it that way?

A. Oh, yes.

Q. Then you didn't communicate with this local agent, as I understand it, until after you had already bound it?

[fol. 672] A. I think that is correct.

Q. And what did you ask that local agent to do? Did you send him a copy of the binder and ask him to tell you if there was anything wrong in it?

A. Oh, no.

Q. Then when did he commence to work? At the expiration of some binder period?

A. Oh, no.

Q. You haven't made it at all clear to me yet, Mr. Tabb, and perhaps you can make it more clear, at what stage you got that local agent into the matter and what you said to him in the first letter that you wrote him about what you wanted him to do.

A. In one case, Mr. Christian, we issued no rider here on their policy. We had the entire coverage handled by the local man, jointly covering both interests.

Q. And you got no part of the commission?

A. And we got no part of the commission and had nothing more to do with it except that we were informed the coverage had been arranged.

Q. Then after that building had been finished and the repair work had ceased, did your policy cover the thing from then on?

A. Oh, yes, subject to endorsement after we inspected it and saw what changes required a change in the premium.

Q. And you didn't need the services of this local agent to get that inspection made and to get these changes determined?

A. No, sir.

[fol. 673] Q. In that case, as I understand it, instead of putting a binder on that policy to enable that repair work to be done and then, at the termination of the repair work, have the company inspector inspect it and determine a proper rider and a proper premium, you decided not to work it that way, but to let this local agent issue a separate policy to protect your assured as well as the contractor while the work was going on and then, after its completion, you took it up again as a permanent thing. What was the advantage to you or to the assured of you working it that way instead of by the binder method?

A. I don't know that there was any particular advantage except that it got the contractor properly covered which is always difficult to do by correspondence and it wasn't sufficiently large for me to justify a trip that distance. It was a simpler way to handle a construction or wrecking risk and it is constantly done that way. I don't know whether the contractor paid the premium out of his profit or whether

the owner of the building shared it or not. That seemed to be the simplest way to handle it.

Q. Had your assured here in Richmond asked you to see that the contractor had proper insurance?

A. Yes. I don't know but what I made the suggestion that I would do it and I would assume that responsibility or rather that effort. I don't know that it involved any responsibility.

Q. In that second case about which you spoke, did you use a rider there or did you handle that the same way you did this one with a separate policy covering both your assured and the contractor during the period of construction?

[fol. 674] A. I don't remember that we ever covered the contractor. I don't recall that we have ever done it.

Q. I thought you had two cases and on one of them you didn't use the binder method. Did you use the binder method in the other case?

A. Yes. You see, if they let a contract for what might be repairs and might be construed as ordinary repairs not covered by policy, for safety, we would issue an endorsement covering that operation, based on the cost to the insured, and usually that is on a flat basis, guaranteed, and not on a cost-plus and we would issue an endorsement and tell them to have their local representative see that that contractor carried insurance also.

Q. And the reason in this one case that you didn't do that was that it was practically a demolition and the addition of a new building?

A. That is it.

Q. Did that commission agent get any money out of your assured for his transaction? You don't know, I think you said.

A. I don't know. If they paid any part of the premium, he did, but I don't know who paid the premium.

Q. Why was it you didn't, or shouldn't, with propriety, ask for part of that commission as the originating and real producing agent?

A. I think I could have fairly asked it, but it wasn't a big amount and I never discussed that. It may be possible that I got some commission but I don't think I did.

Q. But that agent down there did get a part of the commission out of the premium for that coverage during the [fol. 675] brief time of that construction work?

A. Yes, sir.

Q. Did you share with that agent also the commission that you got for the original and main coverage on that location?

A. No, sir.

Q. How did this second agent get his compensation? Didn't you say there had been two occasions when you had called on local agents?

A. Yes.

Q. How did the second one get his compensation?

A. I think that also involved a bond which he wrote.

Q. For the contractor?

A. For the contractor and the owner.

Q. That would be a bond on which the owner was the obligee and the contractor was the principal obligor, wasn't it?

A. That is right, yes.

Q. And he furnished the bond to the contractor in order to enable the contractor to comply with his obligation, to bind his performance of the contract?

A. Yes, that would be the reason for the bond.

Q. Did you pick out the local commission agent in these cases or did the contractor in one or both cases designate the agent?

A. I think I used the branch office of the Travelers for the name of the agent, as I remember it, in both cases.

Q. And the contractor was agreeable to let this second agent get the commission for furnishing his bond?

A. I understand so.

[fol. 676] Q. And the Travelers, pursuant to its agreement to follow the declaration of principles, just turned that over to a branch office commission agent and let him act as the producer?

A. I don't remember, Mr. Christian, whether they turned it over to a branch or whether there was a branch in this city, or not.

Q. It might have been a Travelers general agent?

A. I might have been that, or it might have been a straight agent like Julius Straus here.

Q. In any case, some commission agent got a commission for writing that bond?

A. Yes, sir.

Q. And that man did not get any part of your original commission for writing a public liability policy covering in that location?

A. No.

Q. Did you have any occasions during the life of this contract to call on the claim department of the Travelers for its engineering or safety of inspection department employees to furnish any service of any sort to the assured?

A. Oh, yes, we frequently call on the inspection department and also the claim department.

Q. When you call on them do you call on the Richmond man, Mr. Murphy, or Mr. Davison?

A. Usually, and he transmits our requests to the proper branch office in the state where the risk is located.

Q. What do you call on these men like Davison and Mur- [fol. 677] phy to do for this assured in these other states?

A. I call on Inspector Murphy to secure an inspection which fully describes the risk and give us the data which goes also to the company on which to make any corrections in the coverage if something new has been added or an elevator installed.

Q. I am not talking about practice and custom. I am [fol. 678] still talking about this risk and occasions when you actually did call on Murphy.

A. I am giving you that.

Q. You say you have called on him sometimes when an elevator has been installed to inspect it and let you know how to rate it.

A. Well, not so particularly to rate it. We could do that here, but to see that the elevator is insurable and in good shape and report to the company so that they could issue the endorsement which is done in this case largely at the home office.

Q. And then you temporarily bind that pending his inspection and report when the formal rider is issued with the premium precisely determined.

A. We have an automatic binder.

Q. Then Mr. Murphy would get the engineering department in the state of coverage to make that inspection and report to him and he would report to you; is that right?

A. Sometimes it comes to him and sometimes it goes directly to Hartford and they send it to me from Hartford.

Q. And then if that engineer claims that something is wrong with that elevator you take it to the assured and tell him about it and try to get him to get it fixed; is that right?

A. I not only try to get it fixed but I do get it fixed.

Q. And if they won't fix it then you would tell them the

plain facts that the company couldn't carry that elevator risk, wouldn't you?

A. I might go that far, but those occasions are right rare.

[fol. 679] Q. But you have had those things come up in this particular risk you are talking about?

A. No, not to the extent of threatening any cancellation.

Q. I don't mean threatening cancellation but having inspections made and reports made.

A. We have constant inspections and reports.

Q. And sometimes there are recommendations for changes made which you have got this assured to conform to?

A. Absolutely.

Q. Have any of those recommendations been made as a result of inspections in regular routine which were not special inspections that you had made?

A. Yes, many of them are the results of routine inspections under general instructions to inspect every new location added to the policy.

Q. And the assured has to give you notice of those things so as to enable you to get Mr. Murphy to have a man in the proper state make the inspection?

A. Right.

Q. Does this contract cover many locations in Virginia among the 800 all told?

A. Yes, quite a number.

Q. Will you say 15 or 20 or more than that?

A. I would say, roughly, more than that.

Q. Scattered all over Virginia or are they all in Richmond?

[fol. 680] A. Scattered all over Virginia.

Q. And you just tell Mr. Murphy to go and make the inspection and he has one of his engineers go and make it and report back to you and you report to the assured and oftentimes he makes an inspection and discovers the need for a change without your having asked for it?

A. Yes, he does and then he reports it to me for action with the assured.

Q. Have you had any occasion to make any address on safety to the elevator operators or the building superintendents or whatnot of this assured all over this territory?

A. No, sir, because there are comparatively few elevators concerned and they are in very widely scattered states.

Q. But they are in hotels, and apartments and store build-

ings, aren't they, and they all have elevators, or many of them?

A. Yes, but this class of property does not have many elevators.

Q. Have you made any addresses to the Virginia employees of this assured who operate these buildings or supervise their operation?

A. We have made no addresses. We have talked to superintendents and people in charge of the buildings.

Q. Throughout the State of Virginia?

A. I haven't personally done that anywhere but in Richmond.

Q. How many people were at that meeting?

[fol. 681] A. Oh, it is usually one individual or two, being all that have any contact with the risks of the building.

Q. You mean in this particular case we are talking about involving these 800 risks, some of the risks are right here in Richmond and that you have sometimes gone away from your office up to the risk and talked to the superintendent there or to the elevator man about the way he operated?

A. Yes, more particularly the main building of the proposition because this policy owner covers rented property, for the most part, where the owner has contingent liability only as owner and the tenant has the direct liability.

Q. Have you had the president of that company write any letters to any of the operators of these properties?

A. We have had the manager of the properties write to real estate agents and others who have charge of the buildings in the various localities.

Q. You have not had him go around and make speeches, though?

A. Only when he goes personally and I have asked him and he has done it, talked to the persons who have control of these buildings.

Q. Tell me, please, in what respects this assured has suffered because of you being the producer of this contract covering in these numerous states and local agents therein not having received at least 50% of your commissions on this risk?

A. I wouldn't say that they had suffered any. If I thought so I would tell them.

[fol. 682] Q. You don't think there has been any need of local agent's services in this risk at all?

A. There hasn't apparently been any.

Q. Do you think your work would have been decreased very greatly if you had given 50% of your commissions in each of these states to some local agent and had had the help of all of those gentlemen, scattered over these 15 or 20 states, in doing this servicing?

A. No, I don't think there would have been much change in the situation because this risk involves little hazard and service is at the minimum on such risks.

Q. Are there any hotels among these 800 risks?

A. I think there are several which are leased to corporations or responsible operators.

Q. Any apartment buildings?

A. A few.

Q. Any store properties?

A. Yes, small stores.

Q. Any garages?

A. I think there are very few.

Q. Any churches?

A. No, I think not.

Q. There are plenty of residences, I guess?

A. Mostly residences.

Q. And two or four family residences?

A. Right.

Q. And that is the generality of it—single residences, two or four family residences and merchandise stores?

[fol. 683] A. Right.

Q. If this had been fire insurance instead of casualty insurance, this case we are talking about, wouldn't you have been just as well able to do everything you have done and get all the commissions and retain them to yourself, or would you have felt that you were required to divide those commissions in order to get the help of people in these various localities?

A. In the case of fire insurance the rating of the buildings and other things enter into the fire insurance business, including custom, which would have required a division of commissions with local agents.

Q. And you would have felt justified in associating those local agents with you and dividing up the commissions without regard to custom and as a matter of your own interest and the interest of the assured, would you not?

A. Well, of course, it is hard to distinguish between what you feel and a custom. We have lived so long under the fire insurance custom that it has become a sort of second

nature and works well and by having the same rule applied to property in your locality as applies to the other fellow's property we figure that it sort of evens up; the commission we receive.

Q. In any case, if this had been a fire risk you would have availed yourself of the services of the local people who write the policy?

A. I might have, yes—wait a minute. I might have with the hope of establishing friendly relations with these agents that might redound to our benefit on business they might have in Virginia.

[fol. 684] Q. Do you think that the agents in the 14 or 15 states, whatever the number, where these 800 properties are, would be better qualified than you to find places where this insurance coverage should be improved and that if you had had those local agents in these various localities they would have improved this coverage in a manner that you have not improved it?

A. That is a possibility because I don't claim to be as well qualified to write business in other states as I am in Virginia.

Q. Why wasn't it your duty then, if that word "possibility" means to indicate a real, practical chance that that is so, to associate these people with you and share your commissions with them for the good of your assured?

A. Well, of course, that is a matter that we leave largely to the insured, or, I must say, we don't bring out a matter that would cause us a severe loss when there might not be any result and we can't go into those considerations when we feel that our assureds are abundantly able to do it themselves.

Q. All right. If your assured had suggested the propriety of your sharing these commissions with the local agents in these various vicinities and had pointed out to you that the local agent could possibly furnish service, that it would be helpful to the assured at various times and it would help its good will in these various communities to have a local agent there who was a booster of the company, would you have sympathized with that viewpoint?

A. I think it is possible I would. I certainly wouldn't offer any great objection to their ideas along that line.

[fol. 685] Q. And if they did that you would rather have taken the business and handled it for half the commission you actually got than not to have gotten that half, wouldn't you?

A. Certainly. That is perfectly true.

Q. Have any of those local agents in these states been writing you to get your consent to come to Richmond and talk to this company and try to get associated in that business with you?

A. No, none of them.

Q. Have any of them solicited your assured to take that business away from you and turn it over to them on the theory that the assured needs a resident local agent to protect its interest in each of these various localities?

A. I don't think they have.

Q. Would you be sympathetic to that and if one of these agents in one of these states did write in here and say he wanted to come to Richmond and get you to take him up and talk to the president of this company on the subject of his acting along with you in his locality with reference to this business, would you give him a warm welcome and gladly take him up there and do what you could to expedite his negotiations?

A. I think if he could show me where my assured would benefit materially from such an act, I would be in duty bound to discuss it with my policyholder.

Q. Wouldn't you think that his actual contact, which is so imperative, with the physical conditions of these risks, would be a manifest thing, and you would have to see it would be to the advantage of your assured for such a local agent to have it?

[fol. 686] A. No, that development has never arisen in such degree as to make that supposition at all conclusive.

Q. I thought those local contacts were always imperative.

A. I did not so state and especially on a risk of this character.

Q. I hate to take you into the workmen's compensation field and I don't want to embarrass you by asking you about too many of your risks so that you think I am prying too much in your business, but isn't it a fact that you are handling compensation business that is covering in places hundreds of miles from the City of Richmond?

A. Yes, I cover such risks.

Q. Are you splitting your commissions fifty-fifty in all of those cases with some local agent?

A. No.

Q. Aren't there a good many of them where you are not giving any local agent anything?

A. Yes.

Q. If you thought that it was imperative that the assured ought to have the benefit of a man with local contacts with those properties and plants, and who is a patron of those plants and who would have large local influence, wouldn't you tell your assured that you felt he should require you to associate such local agent with you or else without telling your assured that, go ahead and form that association?

A. No, I don't think it is encumbent upon me to go that far unless the occasion arose which made it evident.

[fol. 687] Q. Or unless the assured required it of you?

A. Yes, or unless the assured required it of me.

Q. However, Mr. T. Garnett Tabb might write his public liability business or his automobile fleet business or his workmen's compensation business and whether or not he feels that his assureds, where he is the producing agent, ought to have the benefit of the local agent's time services, you are satisfied that all of these local assureds that deal with Washington, Baltimore and New York agents need the services of some Virginia resident agent, aren't you?

A. I think if I were in charge of that I would investigate very fully that improvement in service.

Q. Do you say on this record that your workmen's compensation insureds, with their coverages more than 100 miles from Richmond, dealing with you as the producing agent, would be well advised to require you to associate somebody in the vicinity of the risk and that while you couldn't perhaps be expected to suggest that to them, that they are suffering because you haven't suggested it to them?

A. I have no actual evidence of their suffering.

Q. Is there any reason to think then that you would ever see any actual evidence of other assureds suffering who, instead of dealing with T. Garnett Tabb, deal with a Washington, D. C., agent or a Baltimore agent and place with him a workmen's compensation risk covering across the line in Virginia? I am trying honestly and frankly, Mr. Tabb, to see what is the position of yourself, as the Dean of this [fol. 688] organization that has perpetrated this law on us. I am trying to get at the right and wrong of this thing and I want to know.

A. I don't claim to be the Dean of the agents in the state. I still think that an able agent in any state can render material service to a non-resident owner of that business.

Q. When you use the word "able", do you mean any

agent who is able to satisfy the statutory requirements of the Virginia Insurance Department for being licensed as a resident agent?

A. I think the word "able" is subject to some comparative degrees and I have no doubt that any agent licensed under the Virginia Statute would be in position to furnish some degree of service that might be of value to the policyholder.

Q. Why is it that that isn't so with the risks where you are the producer if that is so with the risks where you are not the producer but would like to share in the producer's commissions? That is what I am trying to get at and I think that is the crux of this case.

A. I don't claim that one agent ought to have an advantage over another in different states and I can see that this law has an effect that may injure me for the benefit of other agents, or it might injure another agent for my benefit, but I think the sum total of the law is beneficial, both to the policyholder and the general rank and file of agents in giving consideration to their claim on business in their own vicinity.

Q. Coming back to this risk with these 800 coverages, you have said, I think, that you didn't think that risk suffered any by your not having local agents associated with you.

[fol. 689] A. I haven't been able to find where it suffered.

Q. Haven't you got some workmen's compensation risks in states other than Virginia where you are sole producing agent?

A. Certainly.

Q. And you haven't associated anybody in those states with you in giving them half the commission, have you?

A. No, sir.

Q. Do you think those assureds, if they were fully and frankly and faithfully served by you and by their officers who have charge of their insurance matters, ought to require you to associate resident agents in those other states with

[fol. 690] you in that business?

A. I think they could find reasons why it would be desirable.

B. But you haven't seen fit to disclose those reasons to them, as I understand it, and argue to them that they ought to make you give up the fifty per cent of the commission and require you to make those associations?

A. No, we endeavor to do everything possible to furnish

an equal service and the Travelers, through its service, helps us to do that.

Q. Now you are coming into agreement with me about something which has puzzled me from the first, that you and I should appear to be at disagreement about. Of course, the answer from my standpoint is that you have the benefit of the Travelers claim service and engineering service and you don't need any local agent in these various states and I am glad you have come around to that, if that is true, and if we are in agreement about it.

A. I have never indicated, as far as I know in my testimony, that I didn't regard that service very highly and of great value to the agent and me particularly.

Q. Well, isn't it, as a matter of fact, to a producer like yourself a wholly adequate thing to protect the interest of your assured without adding on some fifth wheel in each of those states to the transaction? Isn't that the true ground on which a man of character, such as yourself, can continue to represent these assureds and not advise them that their interests require them to get local agents in all of these different spots?

[fol. 691] A. Yes, my personal service, I think, has proven satisfactory to the clients of my office.

Q. But I ask you isn't the fact that you have got the engineering and claim service of the Travelers the thing that keeps it from being your duty in honor to get this local association?

A. Of course I use the engineering and claim service of the company which is a part of the value of the policy on which I sell it.

Q. And am I not right in attributing to you the conscientious belief that those services are adequate for the protection of the interests of the assured in these various localities where you are not personally present?

A. Yes, I think that my services are adequate in these places.

Q. I am not talking about your services; I am talking about the company's claim and engineering services. That is what we are saying is adequate, isn't it?

A. No. I make a distinction. I mean that my services, combined with what I require and secure from the company, makes the complete service I refer to.

Q. And a lot of what you describe as services which you require and secure would be forthcoming if you stayed in

your house and cut yourself off from contact with the world, wouldn't they?

A. I don't think it would be as efficiently rendered.

[fol. 692] Q. A lot of it I say would be forthcoming without your requiring it, as you put it, or securing it?

A. Oh, yes, of course some of it would be because it is routine service in some respects.

Q. Is there any reason to think that the ordinary agent of most companies in Virginia is any more honorable a man or more well equipped man than the ordinary agent of most companies or the ordinary broker with a clientele of important assureds in cities like Baltimore, New York, Boston, Chicago, Philadelphia, Atlanta, St. Louis and New Orleans?

A. No, I wouldn't draw any unfavorable comparison.

Q. Could not they get just as much help toward furnishing adequate service to their assureds from the claim and engineering departments of the Travelers that the ordinary Virginia agent of the Travelers could get from its claim and engineering department?

A. I think they could get the same service.

Q. Then you think, as a matter of fact, that the Travelers producing agent in a state other than the state of coverage who properly utilizes the claim and engineering service can adequately service the assured, do you not?

A. Yes, my experience with the Travelers is that an agent of ability, located anywhere, can secure adequate and satisfactory service for his policyholders.

Q. Without the association of an agent in the locality of coverage?

A. Yes, without the association of anyone.

[fol. 693] Q. Is there is any need then for this association of agents in the localities, it would proceed, in your opinion, from a difference between the efficiency of the Traveler's claim department and engineering department and the efficiency of the claim and engineering departments of the other company that that agent might be producing for; is that correct?

A. That would be largely true.

Q. Do I understand you to intimate that you are sufficiently informed to be able to say, and that you do say, that there is any substantial difference between the engineering service and the claim service of the Travelers and the engineering and claim service of the Fidelity & Casualty Com-

pany of New York, which difference would prevent what you have just said as to the Travelers non-resident agents being equally true as to an F. & C. non-resident agent?

A. I have no personal knowledge of the efficiency, nature and extent of their service, so I don't care to answer the question.

Q. Would that be true if, instead of the F. & C. I referred to the plaintiff in this case, the Aetna or the plaintiff Maryland or the plaintiff Hartford Accident & Indemnity or Hartford Steam Boiler or New Amsterdam?

Q. Is that so as to the other companies I have enumerated, that you haven't sufficient information to want to make a statement?

A. Yes, I would answer the same way, that my actual knowledge is not sufficiently accurate to make a statement on the subject.

[fol. 694] Q. Isn't it a thoroughly common thing for insurance agents, not at frequent intervals because, of course, they are not bobbing around like floats in the water, but from time to time during their lives, to change their company connections?

A. Yes.

Q. Isn't it a thoroughly common thing for engineers and claim people to change their company connections?

A. I presume so, but the Travelers doesn't seem to have that kind of experience.

Q. There is no secret about the things the Travelers is doing? They are shouting it to the world all the time?

A. They are good advertisers.

Q. And these other companies that I have been talking about are advertising just as well, aren't they?

A. I wouldn't say just as well, but I again don't want to draw any odious comparisons.

Q. I mean if the Travelers has any deep secrets about handling claims or handling inspection work, in the course of human events, it is entirely likely that its leading competitors would find out about it, isn't it?

A. They might, but I don't think anything I could say on that subject would illuminate the court.

Q. And if they thought the Travelers had methods superior to theirs and which had been demonstrated to be superior, they would have reason to consider the adoption of those methods in lieu of their inferior ones, would they not?

A. They might but again I am totally unable to answer that question.

[fol. 695] Q. I come now to the Century Indemnity Company and ask you about it what I have asked you about the other companies I have named. Do you have any information about the claim service and inspection service which it purports to furnish and does furnish?

A. I have none.

Q. And, for all you know to the contrary, its agents might be able to get the same help from it in these directions that you get from the Travelers; is that correct?

A. I have no information on the subject to form an opinion.

Q. You do know that the Travelers writes about one-seventh in dollars of the total casualty and surety premiums resulting from Virginia coverage, don't you?

A. I haven't seen these exact figures, but I assume Mr. Christian quotes them from some basis he knows is correct.

Q. And the U. S. F. & G. and Maryland and Aetna and F. & C. write about half what the Travelers does, according to your general understanding, don't they?

A. Yes.

Q. And the New Amsterdam and Employers write about a fourth of what the Travelers does, don't they?

A. You mean in Virginia?

Q. In Virginia?

A. I didn't think they wrote as much as that.

[fol. 696] Redirect examination.

By Mr. Staples:

Q. Mr. Tabb, how many persons or partners in your office, or is it a corporation?

A. Three, Messrs. Tabb, Brockenbrough and Ragland under a partnership agreement.

[fol. 697] Q. How many people do you have employed in addition to the partners?

A. Nine, and, of course, this does not include subagents and solicitors.

Q. When it comes to a question of what service might have been rendered with reference to any particular policy or contract in your office, you naturally wouldn't have personal knowledge of all the service that is rendered if it

happened to be rendered by one of the other partners or employees of the office, would you?

A. No, I would not.

Q. I wish you would state what is the organization known as the Southeastern Underwriters Association?

A. My understanding of this organization is that it is composed of about 200 stock fire insurance companies operating in the southern states south of the Potomac River and has been in existence for many years, with headquarters at Atlanta, Georgia.

A. (Continuing) I understand this association was originally known as the Southeastern Tariff Association which was formed in the year 1882.

Q. Some question was asked you by Mr. Christian as to the service an agent might possibly be called on to perform in connection with a supersedeas bond or other bond of that type. I will ask you whether or not it is frequently the case that the bonding company requires the principal of that bond to put up collateral security to indemnify the surety or bonding company against loss on the bond?

[fol. 698] A. Yes, this is required in many cases and the agent is supposed to secure the collateral and otherwise arrange for a satisfactory basis before the company assumes the liability.

Q. Isn't it a fact that, due to changing conditions and values of the collateral deposited, there might be a desire on the part of the company for the deposit of additional collateral or there might be a desire on the part of the principal of the bond to withdraw part of the collateral or change the form of his investment and substitute other collateral?

A. Yes, all of this may be required.

Q. In the event of anything of that kind happening would the agent naturally be called on to take part in the transaction and render some service in connection with it?

A. Certainly, the agent is supposed to look after all dealings between the company and the insured under the bond.

Q. If an agent writes a Fidelity bond to insure the employer against loss from an employee, is it not a part of the service of the agent, if, in the course of the agent's experience, he learns of any improper habits of the employee, such as extravagance or drinking or gambling or anything of that kind, to report this to the employer and also to the insurance carrier?

A. Personally I have never had occasion to perform this service but I understand it has been performed and I feel confident that any agent rendering proper service would perform this service.

[fol. 699] Q. I believe you stated that in these large countrywide risks in which the assured is what is generally known as a national corporation, such as a chain store or chain of theaters or a manufacturing company with plants scattered throughout the country, the local Virginia agent would have no reasonable opportunity of contact with the officers of that national corporation, which is a prospective assured, with a view to negotiating the Virginia coverage? I wish you would state what is your experience along that line.

A. Most of the cases of this character handled in my office have been where the headquarters of the corporation are in Virginia. We have been associated on other cases with New York and other brokers in handling such class of business, not only on their Virginia operations, but operations in other states. We have made no great effort to solicit this class of business where the headquarters were outside of Virginia and only a small portion in Virginia unless we could associate with ourselves a resident broker at the headquarters of the corporation.

Q. Why have you not made an effort to secure such business from corporations with their headquarters in New York and other large cities?

A. I stated in such cases we usually associated with us the resident agent in New York or other city, feeling that they would have more influence and a closer personal contact. We have secured business of this kind direct from out-of-state corporations but the chances of success under such circumstances are not very great unless, under some peculiar circumstances, you have a personal touch with some prominent official of the company.

[fol. 700] Q. Mr. Christian asked you about changes which might be made in various types of insurance contacts which would result in an increase in the premium and an increase in your commissions and implied that the only incentive the Virginia agent would have in connection with such changes would be to increase his compensation. I will ask you whether or not it isn't frequently the case that the

changes suggested by the agent bring about a reduction in the premium and hence a reduction in his compensation?

A. Yes, I would say it is about fifty-fifty, especially during the last few years because of reduction in rates and, therefore, return premiums and reduction in advance premiums, and, of course, the agent's compensation is entirely based on the amount of premium so a return premium or reduction in premium causes a loss of commission to him.

Q. Mr. Christian asked you about these jewelry bonds, that is, to protect the insured against loss of jewelry. Is that any substantial percentage of the business of your office?

A. No, not in percent of total volume of premiums.

Q. What would be your estimate of the percentage of total volume of premiums accruing from policies of that type?

A. Not 1% of the total volume of premiums.

Q. Mr. Christian asked you some questions as to the relative efficiency and value of the services rendered by the engineering and service departments of the Travelers Insurance Company as compared to certain other companies which he named. I realize your reluctance to make any invidious comparison as to any other individual company but I would like for you to state what, in your opinion, is the answer to that question as applied generally to other [fol. 701] companies and not to any particular company.

A. I am thoroughly familiar with the service, both as to claims and accident prevention, rendered by the Travelers Insurance Company, having been intimately associated with this form of service in several states for almost 45 years. I know their reputation among the public and also among insurance authorities to the effect that they stand preeminent for their efficiency and liberal claim service and their scientific and far-reaching accident prevention work. Their motto, since my association with them, shows this conclusively, being "An accident prevented is a benefaction; an accident paid for an apology." This motto has been emblazoned over their vice-president's door for 40 years or more. On account of their tremendous business they are in position, both financially and as a creed, to render far more superior service than any other company in this line of business.

Q. How many casualty companies did you say were qualified to do business in Virginia?

A. I have never counted them but I understood there were about 60 licensed to do business in Virginia.

Q. Do you know whether any large percentage of these companies maintain any permanent organization in this state to render engineering service?

A. I would say, from my personal observation and as a result of competition, a very small percentage of them maintain local establishments in Virginia for that purpose.

Q. In cases where this service is not maintained by a local service organization, state whether or not, in your opinion, it is necessary for the local resident commission [fol. 702] agent to be more alert and active in his service in securing the sending into this state, if necessary, of numbers of the service organization of the particular casualty company that he represents?

A. Yes, he must be called on for that service and I understand for both inspection and claim service companies send out-of-state representatives in under these conditions.

Q. Who customarily makes the request for that service?

A. The agent.

Q. In your opinion would the combined records of all of the commission fire insurance agents in Virginia reflect an accurate record of the total fire insurance premiums on coverage in Virginia collected by fire insurance companies in cases where the contracts were negotiated outside of the state and prior to the passage of the 1938 Act.

A. Prior to the passage of the 1938 Act, I think the records held by local agents would be very incomplete.

Q. Mr. Christian on his cross-examination spoke of the danger of brokers in New York transferring the policy from a standard Virginia admitted company to some company not admitted to do business in Virginia, from whom he could secure larger commissions than from a regular Virginia admitted company. I wish you would state your opinion as to the attitude of the assured toward a transaction of this kind, if he has knowledge of same.

A. I don't think the non-resident owner of a business in Virginia would allow his insurance to be placed in non-admitted companies as I feel confident he would investigate the difference in service he could receive in the event of a claim under the policy in Virginia.

Q. Do these non-admitted companies have any service [fol. 703] organizations at all in Virginia?

A. None whatever that I know of because my understanding is any service people in the state would be subject to arrest and fine.

Q. Does a policyholder regard it as a valuable right to be able to sue the insurance carrier in the state where the cause of action arises and where the witnesses live who would testify about the transaction?

A. I should certainly think so.

Q. I believe the record shows that there is an organization of insurance companies known as the Association of Casualty & Surety Executives. Do you think it would be a difficult matter for that association to bring home to the large assureds in New York and other cities the existence of any such practice as Mr. Christian has indicated might grow up among the brokers and would have the effect of causing the assured to examine into the question of whether or not the broker is undertaking, for the sake of larger commissions, to place the coverage in less advantageous companies?

Q. If you think your general experience in the insurance business qualifies you to answer this question, I wish you would do so, and state your reasons for you- conclusion.

A. The association mentioned is, in my judgment, very powerful and could reasonably enforce most any regulation they saw fit to require and I think brokers and agents alike would fall in line.

Q. A question was asked you by Mr. Christian as to whether or not the good will which you spoke of which would be built up by a foreign corporation with a local [fol. 704] establishment in Virginia would be confined to the agent buying the product of the local plant or establishment. The record is not very clear whether you intended to confine your testimony with reference to this good will to such acts as are referred to or whether you intended to embrace the general good will which would grow up in a community due to the practice of a company to patronize local businesses and industries. I wish you would state just what you had in mind in that connection.

A. I intended to make my statement clear that, in my judgment, as shown in several cases, an insured having plants in the State of Virginia is very much interested in the good will of the vicinity where the plants are located and this good will would be enhanced by placing their in-

surance through local agents, just the same as making purchases of other commodities through local establishments.

By Mr. Staples:

Q. I believe some discussion was had on your cross-examination as to the relative ability of a non-resident broker and of the local commission agent to render service to an assured. Regardless of whether or not the one or the other is able to render the best service, I wish you would state whether or not, in your opinion, it is to the best interests of the assured that he should have the combined service of both of them or whether either alone would, in your judgment, as a general proposition, be able to afford as efficient and satisfactory results as the two combined.

[fol. 705] A. I thought in my preceding testimony I had made it clear that I felt that the Travelers service in other states where we had risks made it unnecessary to have local agents associated with us but I thought I also stated that there might be occasions arise where the service of a local agent would be helpful and we stood ready to secure it. I emphasized the Travelers service because I feel the Travelers has put us in position to handle country-wide business most efficiently and I think they are one of the very few companies who have made that service possible. Therefore, taking average cases, particularly of other companies, I would state that the association of a broker and local agents would result in very much better service to the policyholder.

Q. Mr. Christian's questions to you on the subject of some contracts which you had covering outside of the State of Virginia assumed a very critical attitude as though you were guilty of some breach of duty to your assured in not associating a local resident agent in these other states. I will ask you whether or not the manner in which you have handled this business isn't in entire conformity with the general practice throughout the country as related to similar types of coverage?

A. Yes, I think it is in conformity with the general practice unless there is some state law which requires association of a local agent. I understand there are some states with such a law and I, therefore, presume the practice in conformity with such law has been pursued by agents and brokers.

[fol. 706] Q. Mr. Tabb, there have been several contracts or policies of casualty insurance introduced by the plaintiffs in this case. The plaintiffs, however, have not introdueed what is generally known as a workmen's compensation policy and I hand you herewith a specimen contract of the Travelers Insurance Company covering a workmen's compensation risk and will ask you to please file that as Defendant's Exhibit C.

A. I will.

Q. I will also ask you to file a similar specimen of contract or policy with reference to boiler and machinery insurance of the Travelers Indemnity Company as Defendant's Exhibit D.

A. I hereby file such a contract.